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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th February 1956

**S.R.O. 487.**—Whereas the election of Shri Salig Ram Jaiswal son of Shri Bisheshwar Prasad, resident of 358, Muthiganj, Allahabad, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Sirathu-cum-Manjhanpur constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ganga Prasad Pathak son of Shri Jangannath Pathak, resident of Village Daranagar, Tehsil Sirathu, District Allahabad;

And whereas, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT

Sri G. D. Sahgal.—*Chairman,*

Sri K. C. Srivastava and Sri S. K. Dongre.—*Members.*

ELECTION PETITION No. 1 of 1955

Sri Ganga Prasad Pathak.—*Petitioner.*

*versus*

1. Sri Saligram Jaiswal, and
2. Sri Sheo Kumar—*Respondents.*

(Election Petition under section 81 of the Representation of the People Act, 1951).

COUNSEL FOR THE PARTIES

Sarvashri Mahabir Prasad Shukla, Baquar Usmani, Mohammed Wasi, Mohammed Taqi, Mohd. Baqar Rizvi, Shambhu Nath Gupta, Sheo Danl Singh, Devanand Sinha, and Jagdish Swarup—for Petitioner.

Sarvashri N. N. Mukerji, Balram Lal Srivastava, Sarwar Husain, B. K. Gupta, Inder Singh and Gopi Nath Kunzru—for Respondent No. 1 Respondent.

No. 2 in person.

### JUDGEMENT

This is a petition filed under section 81 of the Representation of the People Act, 1951, before the Election Commission, India, New Delhi, who have sent it for trial to this Tribunal appointed under section 86 of that Act.

The petition relates to a by-election to the Legislative Assembly, U.P. from Sirathu-cum-Manjhanpur constituency, in the district of Allahabad, held on December 19, 1954, result whereof was declared on the 21st December, 1954.

There were three candidates whose nomination papers were accepted. They were the petitioner and the two respondents. Later on, however, the petitioner withdrew his candidature and there remained only two candidates in the field, namely, the two respondents—Sri Saligram Jaiswal and Sri Sheo Kumar Pande. At the election respondent No. 1 was declared duly elected.

This petition has been filed by Sri Ganga Prasad Pathak under section 81(1) of the Representation of the People Act, 1951, by virtue of his being an elector and he has made both the candidates parties to the petition as respondents.

The election is being challenged on the grounds that (i) respondent No. 1, his workers, supporters and agents committed corrupt practices during the course of the election as defined in section 123(8) of the Act, (ii) undue influence under the cover of their official position was exercised by certain persons named in the petition in favour of respondent No. 1, (iii) a large number of red caps were distributed by way of bribery to certain workers and supporters in order to induce them to work and vote for respondent No. 1, and (iv) the Return of Election Expenses filed by respondent No. 1 was wrong and falsely prepared.

It is alleged that a number of sarpanches of the Naya Panchayats of Panchayati Adalats, members of the Naya Panchayats or Panchayati Adalats, pradhans of Gaon Sabhas and chairman of the Land Managing Committees constituted under the U.P. Panchayat Raj Act, the U.P. Zamindari Abolition and Land Reforms Act, and the Rules made thereunder, members of the Gaon Sabhas and vice-chairman of the Land Managing Committees and mukhtas, described in lists A and C to G appended to the petition, were appointed as polling agents by respondent No. 1 and as such they acted at the various polling stations in that capacity and not only performed the statutory duties but also left the polling booths as occasion arose, went outside the polling stations and persuaded different voters to vote for respondent No. 1 and in addition did other election work on the date of poll outside the polling stations at the instance or with the connivance of respondent No. 1. Those very persons and also the sarpanches described in list B canvassed for respondent No. 1 and gave assistance for the furtherance of the prospects of his election by distributing pamphlets issued in support of his candidature, distributing cards to the voters on his behalf, arranging meetings and processions and participating therein and doing all work arising out of the conduct of election within their jurisdiction and also outside, since before a month of the date of election and throughout that month, and even on the date of poll outside that polling station in contravention of the provisions of section 123(8) of the Representation of the People Act 1951, although they were persons serving under the State Government.

Under the cover of their official position they are further said to have exercised undue influence in favour of respondent No. 1, and as a consequence thereof and due to their canvassing a large number of voters were deterred from exercising their free right to vote.

Names of certain persons have been given in the petition in a list appended thereto as list H, to whom a large number of red caps was distributed by way of bribe on the date of election and within a fortnight of the election.

List 'I' attached to the petition gives the names of various persons from outside Allahabad who worked and canvassed for respondent No. 1 or went from the city of Allahabad to different polling stations in connection with the election. Their expenses are alleged not to have been shown in the Return of Election Expenses, amounting to the suppression of a material fact in that return.

On these allegations it is prayed that the election of respondent No. 1 be set aside and he be declared disqualified for having committed these corrupt practices.

Written statements have been separately filed by the two respondents. Respondent No. 2 has only supported the petitioner.

Respondent No. 1, however, has opposed the petition and the pleas taken by him are that the petitioner was not an elector for the U.P. Legislative Assembly from the Sirathu-cum-Manjhanpur constituency and as such he had no right to file the petition, and that he, his workers, supporters or agents did not commit any practices as defined in section 123(8) of the Representation of the People Act, 1951, or any corrupt practices whatsoever. It is denied that he obtained or attempted to obtain by himself or by his agents, workers or supporters, any assistance of persons serving under the Government of Uttar Pradesh for the furtherance of the prospects of his election. He also denies that he engaged any Sarpanches of Nyaya Panchayats or Panchayati Adalats, parganas of Gaon Sabhas or chairman of Land Managing Committees, members of Gaon Sabhas or Land Managing Committees, Up-pradhans of Gaon Sabhas and Vice-chairman of Land Managing Committees, or mukhias for working, canvassing, or distributing cards to him, or taking any active part in the work of canvassing, or acting as polling agents, or that they ever transgressed their statutory duties or left their polling booths or went outside the polling stations to persuade any voter to vote for him, or did any other election work on or before the date of polling, or distributed pamphlets or cards, or arranged meetings and processions and participated therein. It is also denied that these persons could at all be said to be serving under the Government of the State of Uttar Pradesh. Any exercise of any type of influence, much less undue influence, in favour of respondent No. 1 under the cover of their official position is also denied. Further, it is said that it was wrong that their alleged canvassing or working deterred any voter in the free exercise of his right to vote. The distribution of some red caps is no doubt admitted, but it is said to be done only to serve as a mark of distinction. It is further said that the Return of Election Expenses filed by respondent No. 1 was not false or inaccurate and no expenses required to be entered in the return have been omitted therein, and at all events, the election is said not to have been affected by the omission of any item alleged by the petitioner from being entered therein.

On the other hand, it is averred that respondent No. 1 had issued instructions to his agents and workers not to commit any acts against law and rules and it is asserted that if any of them be found to have acted against the instructions, which fact is not admitted, even then he would not be liable or responsible in any case.

Lastly, it is pointed out that the so called irregularities are no illegalities or corrupt practices under the law and do not constitute any valid grounds for challenging the election of respondent No. 1.

On the date of issues the plea regarding the use of undue influence was given up. As to the distribution of red caps to a large number of persons it was suggested that that amounted to bribery under section 123 (1) (ii) of the Representation of the People Act, 1951.

The pleadings gave rise to the following issues:

#### ISSUES

1. Whether the petitioner is an elector for the U. P. Legislative Assembly from Sirathu-cum-Manjhanpur constituency?

2. Whether the sarpanches of the Naya Panchayats or Panchayati Adalats, members of the Nyaya Panchayats or Panchayati Adalats, Pradhans of Gaon Sabhas and chairman of the Land Managing Committees constituted under the U.P. Panchayat Raj Act and the U.P. Zamindari Abolition and Land Reforms Act and the Rules made thereunder, members of the Gaon Sabhas and the Land Managing Committees, Up-pradhans of Gaon Sabhas, and Vice-chairmen of the Land Managing Committees and mukhias as mentioned in lists A to G of the petition, canvassed for respondent No. 1 and gave assistance for the furtherance of his prospects at the election by distributing pamphlets issued in support of his candidature, distributing cards to the voters on his behalf, arranging meetings and processions and participating therein and doing all other works arising out of the conduct of election within their jurisdiction and also outside since a month before the date of election and throughout that month and even on the date of poll outside the polling stations? If so, whether all this substance was given at the instance of or with the connivance of respondent No. 1 or his agents?

3. Whether among the persons referred to above those described in lists A a C to G were appointed as polling agents by respondent No. 1 and acted as such the various polling stations and not only performed the statutory duties but also left the polling booths as occasion arose, went outside the polling stations and persuaded different voters to vote for respondent No. 1, and did other election work on the date of polling outside the polling stations at the instance or with the connivance of respondent No. 1?

4. Whether the sarpanches and the members of the Naya Panchayats or Panchayati Adalats, pradhans up-pradhans and members of Gaon Sabhas, chairmen, vice-chairmen and members of Land Managing Committees and mukhtars can be said to be serving under the Government of the State under clause (8) of section 123 of the Representation of the People Act, 1951?

5. Whether respondent No. 1 distributed red caps to the voters described in list H appended to the petition? If so, did it amount to bribery under section 123(1) (ii) of the Representation of the People Act, 1951?

6. Whether respondent No. 1 issued any instructions to his agents and workers not to commit any acts against law or rules and if any of them is found to have acted contrary to the instructions, is respondent No. 1 liable for him?

7. Whether the persons described in list 'I' of the petition worked and canvassed for respondent No. 1 at the election or went from the city of Allahabad to different polling stations and whether their expenses have not been shown in the Return?

8. Whether even if the findings on the above issues except issue No. 6 be in the affirmative, has respondent No. 1 been guilty of any corrupt practices and whether on that ground is the election liable to be set aside and respondent No. 1 disqualified?

#### FINDINGS

##### Issue No. 1.

A certified extract of the Electoral Roll has been filed being exhibit No. 1. It shows that in the year 1954 the name of the petitioner was entered at No. 140 on the Electoral Roll for village Chak Chamrupur, Daranagar, Tahsil Sirathu, district Allahabad, for Sirathu-cum-Manjhanpur constituency of the U.P. Legislative Assembly.

The petitioner being an elector, therefore, had a right to file a petition under section 81(1) of the Representation of the People Act, 1951.

##### Issues Nos. 2 and 3

These issues can be more conveniently disposed of together as the witnesses that have been produced on either side are common to both the issues.

These issues arise out of the alleged action on the part of certain persons described in lists A to G appended to the petition.

Lists A and B give the names of sarpanches, their residence, their polling stations, places where they worked and canvassed, the names of their circles and the period during which they worked.

List C similarly describes certain members of Nyaya Panchayats or Panchayati Adalats, their residences their polling stations, the Nyaya Panchayats or Panchayati Adalats of which they were the members and period of their activities complained of.

List D similarly describes some pradhans of Gaon Sabhas and chairman or of the Land Managing Committees.

List E gives the names of certain members of Gaon Sabhas and the Land Managing Committees whose actions referred to above have been questioned.

Lists F and G respectively contain the names of certain up-pradhans of Gaon Sabhas and vice-chairmen of the Land Managing Committees and mukhtars.

These lists besides describing the residences and the polling stations of the persons named therein gives the names of the villages, of Gaon Sabhas, or of the Panchayats to which they are attached and also the places where they are

aid to have worked and canvassed. These persons are all further described as having worked for respondent No. 1 on the date of election and within a month of it.

All the persons described in lists A to G are alleged to have worked, canvassed and distributed cards for respondent No. 1. They are also said to have worked at the polling stations and to have persuaded the voters to vote for him, and to have done other election work on the date of polling outside the polling stations. Before the date of poll they are said to have canvassed for respondent No. 1 in the villages of their residence and in the villages within their jurisdiction. Their work is said to have consisted of, among other acts, the act of distribution of pamphlets issued for supporting respondent No. 1, arranging meetings and processions and participating in them. All these things are said to have been done since before a month of the date of election and throughout that month.

The persons whose names are contained in lists A and C to G are further said to have been appointed as polling agents by respondent No. 1 on the date of poll. They are even said to have acted as such at the various polling stations for which they were appointed and in that connection they are said not only to have performed their statutory duties but also to have left the polling booths as an occasion arose, gone outside the polling stations and persuaded different persons to vote for respondent No. 1, and done other election work outside the polling stations.

All the persons described in these lists, therefore, except those described in list B, are said to have been appointed by respondent No. 1 to be his polling agents, and they not only are said to have acted as such but also to have participated in other election activities of the type referred to above, and as they were all persons serving under the Government of the State of Uttar Pradesh this action on their part amounted to a major corrupt practice under section 123 (8) of the Representation of the People Act, 1951. In connection with these two issues, however, we have at present only to consider whether they did actually act as they are alleged to have acted and not with the effect of their having so acted. Those described in list B are not alleged to have acted as polling agents of respondent No. 1 but they too are said to have taken part in other activities referred to above. Their activities are the basis of a charge of major corrupt practice of the kind indicated in section 123 (8) of the Act.

Oral evidence has now to be examined to find out whether these allegations have been made out.

The law does not lay down any particular type of evidence that has to be produced in such cases, nor is any quantum of evidence prescribed which must of necessity be produced in order to establish the charges of the kind referred to above.

Certain criteria, however, have been laid down from time to time by various Election Tribunals as detailed below where similar matters came up for determination from time to time.

It has been laid down in 'Rehmat Ali v. Noorullah' and 'Noor Mohammed v. Sir Nasiruddin' by the First Election Petitions Commission (Punjab) in their report dated 25th August, 1937, relating to Lyallpur (Mohammadan) Constituency and Toba Tek Singh (Mohammadan) Constituency that suspicion howsoever strong cannot take the place of proof, it being well-settled that the standard of proof required in a matter of corrupt practice is the same as that in the case of a criminal charge (*vide* Doabia's Indian Election Cases, 1935-1950, Vol. 1, 1950 edition, page 121, at p. 126).

In another case reported in the same Volume relating to the Election Tribunal, U.P. (at page 133) it was observed that where in an election case the issue is of criminal nature, the evidence must be of the same standard as would be required in a criminal case, and in dealing with criminal or quasi-criminal charge mere suspicion howsoever strong cannot take the place of proof. That was a case of false personation. Any major corrupt practice is more or less of the nature of a criminal charge and strict proof is needed to bring home the charge.

In 'Abdul Rouf v. Makhtar Ali and others' (2 E.L.R. 340) the Election Tribunal, Gauhati, though observing (at p. 346) that the inquiry in case of a major corrupt practice was of a quasi-criminal character and rigid proof is to be demanded of the person bringing the charge to prove his case beyond all reasonable doubt held that it did not fully exonerate the persons charged with such corrupt practice from producing evidence, specially, evidence in proof of a fact within his special knowledge, as he is bound to do under the provisions of

section 106 of the Indian Evidence Act. The argument advanced before the Tribunal that there was absolutely no obligation on the respondent who was in the position of an accused to produce any evidence was repelled.

It has been laid down in *Desai Basawaraj v. Dasankop Hasansab and others* by the Election Tribunal, Dharwar (*vide* 4 E.L.R. 380, at pp. 394-5), that although an election inquiry is of a quasi-criminal nature the standard of proof is not necessarily the same as in criminal cases although in practice the inclination should be to appreciate the evidence with the same care as in criminal matters.

Lastly, in *Devasharan Sinha, v. Sheo Mahadev Prasad and others* the Election Tribunal, Patna (10 E.L.R. 461), has held at p. 482 that it is a settled principle that standard of proof required in the matter of corrupt practices should be the same as that in the case of a criminal charge.

Considering all these authorities as a whole we are of opinion that in such cases strict proof of the allegations should be required from the petitioner.

The contest is between two rival political parties. Respondent No. 1 was declared duly elected by a majority of over 15,000 votes. Either party could produce as voluminous oral evidence as it chose from its supporters. In this case forty-seven witnesses have been examined on behalf of the petitioner and seventy-eight persons have been produced on behalf of respondent No. 1. A thorough examination and a critical analysis of the whole evidence is, under the circumstances, necessary.

We would first take up the case of persons described in lists A and C to C who are said to have been appointed by respondent No. 1 as his polling agents. There are four persons in list A, seventeen persons in list C, four persons in list D out of whom No. 1 is the same as No. 1 in list A and No. 4 as No. 11 in list C, eight persons in list E, though it describes their number to be nine—missing No. 4 from the serial—apart from No. 1 of this list being the same as No. 1 of list C, four persons in list E, and five persons in list G. The total thus comes to thirty-nine.

Out of these thirty-nine, the learned counsel for the petitioner during the course of his argument has given up the cases of No. 4 of list A, Nos. 6, 8, 10, 13, 15, and 16 of list C, No. 3 of list D, No. 7 of list E, Nos. 1 and 3 of list F and No. 3 of list G. Besides these, Kripa Shanker Dubey (P.W. 16), the Panchayat Inspector at Sirathu, has categorically stated as to Baijnath Prasad and Maharaj Prasad Tripathi, Nos. 1 and 2 of list C, that they are not members of Panchayat Adalats at all. No amount of oral evidence in the circumstances can, therefore, establish that they are the members of the Panchayat Adalats. Out of them, no doubt, No. 1 (Baijnath Prasad) is the same as No. 1 of list E. But list E relates to members of Gaon Sabhas and Land Managing Committees and as to it Kripa Shanker Dubey (P.W. 16), has stated that Baijnath Prasad is a member of Land Managing Committee. We are thus left with only twenty-six persons who according to the petitioner held various offices described in lists A and C to G.

Even out of the remaining twenty-six there is no satisfactory evidence as to some that they at all acted as polling agents for respondent No. 1 even though they had been appointed as such.

Sri Jagat Narain Trivedi (No. 1 of list A), who is also No. 1 of list D, was appointed as the polling agent by respondent No. 1 at Daranagar polling station. The polling agency form is on record as exhibit 2. This is the form sent by respondent No. 1 to the Presiding Officer at that polling station. But no duplicate of this form on which the polling agent might have signed before the Presiding Officer as proof of fact that he actually acted as such has been produced before us. We have only some oral evidence to establish that this man, Sri Jagat Narain Trivedi, acted as polling agent for respondent No. 1, and consists of the statements of the petitioner himself (P.W. 1), Satya Deo (P.W. 1), Dwarika Prasad (P.W. 33), and Mathura Prasad (P.W. 35). On the other hand, on behalf of respondent No. 1, have been produced Daya Narain (D.W. 10), Maharaj Prasad (D.W. 23) who is No. 2 in list C, Jagat Narain Trivedi himself (D.W. 33), and Jagannath Prasad (D.W. 35), who is No. 2 in list E. While the witnesses produced on behalf of the petitioner say that Jagat Narain Trivedi actually worked as a polling agent at Daranagar polling station, those produced on behalf of respondent No. 1 including, Jagat Narain himself emphatically deny that he acted as such. The best evidence would have been the polling agent's form signed by Jagat Narain in the presence of the Presiding Officer showing that he actually worked there as polling agent.

In the circumstances, we have no hesitation in holding that it has not been established that Sri Jagat Narain Trivedi acted at all as polling agent for respondent No. 1 at Daranagar polling station.

Sri Chandrika Prasad Singh (No. 12 of list C) was appointed as polling agent as would appear from forms exhibits 15 and 93 at polling station Kanaili, but the polling agent's form which he might have signed before the Presiding Officer to indicate that he was actually present there and acted as such has not been produced before this Tribunal. We have, however, certain list (exhibit 77), prepared by the Returning Officer indicating that Chandrika Prasad Singh was a polling agent at Kanaili polling station No. 3. That list at the most shows that Chandrika Prasad Singh was appointed a polling agent at that polling station but it does not indicate that he actually acted as such. The statement of Man Bhawan Lal (P.W. 43) also indicates that this was a list which was sent to the Presiding Officers at various polling stations by the Returning Officer which means that it was not the list of persons who actually acted as polling agents but a list of the persons who were appointed as such. Kesari Singh (P.W. 8) was produced to prove that Chandrika Prasad Singh was polling agent for respondent No. 1 at Kanaili on the date of poll. It is, however, rebutted by the statement of Gyan Singh (D.W. 57), another person who was also alleged to have acted as polling agent at that station. He says that he (Gyan Singh) was the only polling agent for Sri Jaiswal from the locality at that polling station, meaning thereby that Chandrika Prasad Singh did not act as such.

Chandrika Prasad Singh, No. 12 on list C, also, therefore, cannot be held as having acted as polling agent on behalf of respondent No. 1 and we decide accordingly.

We next come to Sri Noorul Huda (No. 4 of list G). He is described as having acted as polling agent at Kashia polling station in that list. But the document exhibit 81 shows that he was appointed as polling agent at Kokhraj polling station. The duplicate of the polling agent's form which he is supposed to have signed before the Presiding Officer on the date of poll has not been produced. There is thus no evidence on record which may lead us to hold that Noorul Huda at all acted as polling agent on behalf of respondent No. 1.

Lastly, we come to two persons who were neither appointed as polling agents nor acted as such.

Sri Raja Ram Tewari (No. 2 of list G). No documentary evidence has been filed to support that he was either appointed as polling agent or acted as such. We have, therefore, no hesitation in holding that he did not act as polling agent at Bairampur polling station where he is alleged to have acted as such.

Sri Rudra Pratap Singh (No. 5 of list G) is another person as to whom we have no evidence of appointment as polling agent or of acting as such, although he is alleged to have acted as such at Dhawara polling station. We, therefore, hold that he too was neither appointed as a polling agent for respondent No. 1 at Dhawara nor did he act as such.

We are thus left with only twenty-one persons from among those in lists A and C to G who acted as polling agents at various polling stations where they are alleged on behalf of the petitioner to have acted as such for respondent No. 1.

We now proceed to consider whether these twenty-one persons acted only as polling agents or besides acting as such they also gave any assistance to respondent No. 1 in furtherance of his prospects at the election. Their cases have to be taken up one by one.

1. Sri Shyama Shyam (No. 2 of list A).—He was appointed as a polling agent at Saini and he also acted as such there. He has been produced as a witness for respondent No. 1 as (D.W. 34). He denies that he distributed any cards for the Praja Socialists Party in villages Saini and Garhi where he is alleged to have distributed the same or to have done any canvassing work there. In the oral evidence produced on behalf of the petitioner it is said that he distributed cards to Lakhan Lal and the members of his family, Raghubir Prasad, Banwari Lal, Mahadeo, Bhairon and Ram Prasad. He specifically denies that he did so at all. He also denies the suggestion that the canvassed on behalf of the P.S.P. at the polling station and brought voters to the polling station on the date of poll. He also says that at no time did he ever invite voters to his house and canvass support for the Praja Socialist Party. He denies having attended any P.S.P. meeting at Sirathu or Saini. The oral evidence produced on behalf of the petitioner to establish that he did all these things consists of the statements of the petitioner himself (P.W. 1), Ram Kumar Misra (P.W. 39) and Lakhan Lal (P.W. 42), the last witness stating that Shyama Shyam gave him a card

on behalf of respondent No. 1. This evidence is rebutted apart from the statement of Shyama Shyam himself (D.W. 34), by the statements of Sukhdeo (D.W. 40), Ram Kishan (D.W. 44) and Vidya Dhar Sharma (D.W. 50).

Of the witnesses for the petitioner P.W. 1 is the petitioner himself and P.W. 39 Ram Kumar Misra is an old worker of the Congress since 1930, as admitted by him. These witnesses, therefore, are interested persons.

Lakhan Lal (P.W. 42) is apparently an independent witness, but his evidence has been more than counter-balanced by the statements of Shyama Shyam himself and the other witnesses, just referred to, Sukhdeo being one of these persons to whom cards are said to have been distributed by him. He denies having received the same while Ram Kishan (D.W. 44) and Vidya Dhar Sharma deny that Shyama Shyam took any part in any of the activities attributed to him. Shyama Shyam himself has stated that he is a patient of heart trouble and cannot move about much.

On the whole we are not satisfied from the evidence to be able to hold it has been established that Shyama Shyam did any act attributed to him other than acting as a polling agent for respondent No. 1 for some time on the date of poll.

2. *Sri Brij Mohan Tewari (No. 3 of list A).*—Four witnesses have been produced on behalf of the petitioner to prove that he assisted respondent No. 1 in furtherance of his prospects at the election. They are petitioner himself (P.W. 1), Mithai Lal (P.W. 3), Banarsi (P.W. 14), and Ragghoo (P.W. 28). He is said to have worked at a number of places on behalf of respondent No. 1 and canvassed for him apart from acting as a polling agent. Evidence however has been given regarding only a few places.

Sri Ganga Prasad Pathak (P.W. 1) stated that he had no personal knowledge as to it, but added that Brij Mohan Tewari had himself admitted before him that he had worked for respondent No. 1 within the limits of Korron polling station.

Mithai Lal (P.W. 3) is a member of Panchayati Adalat, Korron, of which Brij Mohan Tewari is the sarpanch. He claims to have seen him taking out processions in support of the candidature of respondent No. 1, and working as an agent. He says that he saw him taking the voters also for voting inside the polling station. He also makes a sweeping statement that he had seen him working for a period of fifteen days prior to the election. But this is only a too general statement. In cross-examination he has stated that he saw Brij Mohan Tewari from a distance of 100 or 125 yards outside the polling station taking the voters inside and that he must have so taken about hundred voters with him to batches of ten to twelve. Het points out that there was an exchange of hot words between Sangam Lal and Jageshwar Lal representing respondent No. 2—the other candidate—and Brij Mohan Tewari. But no report was made to any of the authorities about this activity of Brij Mohan Tewari. This witness, however, had to admit that he was set up on behalf of the Congress as a member of the Panchayati Adalat to which he belongs. He has not impressed us to be an independent witness. He has gone to the extent of saying that before he entered the witness box he had never given out either to the petitioner or to Sri Sheo Kumar Pande or to any one else that he had seen Brij Mohan Tewari sponsoring the cause of respondent No. 1 or working for him. This simply unbelievable.

Banarsi (P.W. 14) is also a panch of the Panchayati Adalat at Korron. He was examined one week after Mithai Lal (P.W. 3) had been produced. A comparison of the statements of these two would reveal distinct improvements. Banarsi had no business to visit Korron Polling Station on the date of poll. He was a voter and went to Qadipur polling station to cast his vote. The nature of work attributed to Brij Mohan Tewari and the manner in which he worked at Korron have been differently described in material particulars by these two witnesses. Banarsi speaks of 10 to 15 P.S.P. workers being busy at the P.S.P. camp at this polling station on the date of election and Brij Mohan Tewari was seen handing over cards to P.S.P. voters; but he is belied by Mithai Lal (P.W. 3) who refers to Brij Mohan Tewari only being busy with P.S.P. voters by leading them to the polling station and does not speak of other workers or about the P.S.P. camp. He goes to the length of saying that an office of the P.S.P., the party to which respondent No. 1 belongs, was situated at the house of Brij Mohan Tewari, and that Brij Mohan Tewari used to take out processions in support of, and canvassed for respondent No. 1.

Lastly, Ragghoo (P.W. 28) who is the pradhan of Gaon Sabha of Poorab Salhara says that Brij Mohan Tewari came to him and sought his services to procure votes for the Praja Socialist Party as he was a pradhan of the Gaon Sabha and could wield influence on that account. He says that he saw Brij Mohan Tewari on the date of poll taking voters inside the polling station in batches of



eight or ten along with him. He was at the polling station for about an hour only between ten and eleven o'clock and during this short period he saw voters being taken by him three or four times.

A critical analysis of the statements of these three witnesses, viz. Mithai Lal (P.W. 3), Banarsi (P.W. 14) and Ragghoo (P.W. 28), who were examined on September 20, 1955, September 28, 1955 and October 3, 1955 respectively would reveal the progressive nature of the improvements made by these witnesses and disentitles them to claim independence. For instance, Mithai Lal makes no mention whatsoever of other P.S.P. workers or P.S.P. camp activities at the polling station Korron, but Banarsi speaks of there being 10 or 15 workers and Ragghoo enlarges the number of P.S.P. workers from 30 to 40. According to Mithai Lal who was at Korron polling station from 10 A.M. to lunch time, Brij Mohan Tewari never entered the polling station and busied himself with the escorting of voters upto the door of the polling station; but Ragghoo (P.W. 28) who was there from 10 to 11 A.M., i.e. during the period Mithai Lal (P.W. 3) was there, clearly says that Brij Mohan Tewari used to lead batches of 8 or 9 voters, take them inside the polling station and this he saw him doing three or four times during one hour. Without dilating on these apparent contradictions revealing their bias we are inclined to say that we have not been impressed by their testimony.

As against this evidence we have the statement of two witnesses on behalf of respondent No. 1 to rebut this evidence, namely of Basdeo (D.W. 46) and Hanuman Din (D.W. 48). Although Brij Mohan Tewari himself has not been produced, though cited as a witness on behalf of respondent No. 1 in the list of witnesses submitted by him, we feel inclined to treat the evidence of respondent No. 1 regarding this point better and more reliable.

Basdeo (D.W. 46), once a tenant of Brij Mohan Tewari before the abolition of zamindari, has stated that in his village Korron Brij Mohan Tewari took no part in the activities connected with the election, that no procession was taken out by the Praja Socialist Party during those days at all, that no meetings were held in the village, and that there was neither any office maintained by the Praja Socialist Party in this village nor was there any at the house of Brij Mohan Tewari. An agriculturist by profession he used to get daily informations of things happening in the village morning and evening.

Hanuman Din (D.W. 48) also is a resident of Korron. He also denies Brij Mohan Tewari's taking part in election activities. He further says that he remind at the polling station from 8 to 10 A.M. and from 1 to 4 P.M. during which period he did not see Brij Mohan Tewari outside polling station on the polling day. He also denies the taking place of any quarrel between Sangam Lal and Jageshwar Lal on the one hand and Brij Mohan Tewari on the other. He denies the taking out of processions in his village and adds that Praja Socialist Party had no office there at all. He refutes the suggestion of consultations taking place at the house of Brij Mohan Tewari and asserts that Beni Madho, Ram Shanker, Jawahar and he himself distributed cards in the village on behalf of the Praja Socialist Party. He is an honorary worker for the Praja Socialist Party.

This is the only evidence in the case. No specific instance has been given as to who were actually the persons with whom Brij Mohan Tewari canvassed support for respondent No. 1, and who were those who might have been seen by any of these witnesses being taken inside the polling station. No written report was lodged with any authority of the quarrel that is alleged to have taken place between Brij Mohan Tewari on the one hand and Sangam Lal and Jageshwar Lal on the other of the activity of Brij Mohan Tewari.

The evidence as a whole is not sufficient in our opinion to entitle us to hold that Brij Mohan Tewari apart from working as a polling agent did any other work to support the candidature of respondent No. 1 such as taking out of processions, canvassing for him or taking voters on the date of polling inside the polling stations, and we decide accordingly.

3. *Sri Shyam Lal Gupta (No. 2 of list C).*—Two witnesses have been produced on behalf of the petitioner namely, Raja Ram Pande (P.W. 24) and Mathura Prasad (P.W. 29) to establish that he took part in the election activities on behalf of respondent No. 1 apart from his acting as a polling agent for him at Ambai Buzurg polling station. On the other hand, Shyam Lal Gupta himself has appeared on behalf of respondent No. 1 to deny all this alleged activity.

Raja Ram Pande (P.W. 24) states that he saw Shyam Lal Gupta at Auraini, Lahdari and Ambai distributing cards and doing canvassing for respondent No. 1. He could not give the names of any one to whom he might have distributed cards and gives the name of only one person, namely Ram Kumar Lohar, with whom he was canvassing support for respondent No. 1. This Ram Kumar was at

a distance of about 10 paces from him when this was being done, and could not have known the nature or substance of the talk as the witness himself claims to have been busy at the moment in canvassing with another person whose name and identity he could not disclose. This witness is an interested witness for he claims to have given the information of all this activity at the Congress office at Daranagar. He also admits that he worked for the Congress during 1952 Elections as well. We do not feel impressed by his statement.

Mathura Prasad (P W 29) claims to have seen Sri Gupta canvassing support for respondent No 1 in his own village Ambai Buzurg and in village Lahdari and to have seen him only once carrying the flag also for respondent No 1 in his village. He says that on the date of poll Sri Shyam Lal used to catch voters on the way and take them along with him and ask them to cast vote for Sri Saligram Jaiswal. He stayed for about ten minutes at one of the camps for getting his card prepared before entering into the polling station. He tries to conceal his leanings by adding that he got his card prepared "where he thought proper". And curiously enough pretends to forget at which of the two rival camps he got his card prepared although he admittedly stayed at the polling station from 9 A.M. till lunch time and was in the queue for over an hour. He has definitely stated in his examination-in-chief that there were two separate camps viz one of the P.S.P. and the other of the Congress. He wants us to believe that he meekly followed Shyam Lal at his bidding, went along with him and went to the booth following him. He names certain persons also, viz Ram Saran Ahir and Rameshwar of his village whom Shyam Lal Gupta took along with him into the polling station to cast vote for Sri Jaiswal.

Shyam Lal Gupta (D W 72) has himself, however, denied all this on oath, although he admits that he was a polling agent at Ambai Buzurg. In face of this clear rebuttal by Sri Gupta himself, it would be hazardous to hold on this evidence that he took any part in the election activity other than that of acting as a polling agent on behalf of respondent No 1.

We accordingly hold that Shyam Lal Gupta also did not participate in any of the alleged activities.

4. *Sri Yuvaraj Singh (No 4 of list C)*—As to him three witnesses have been produced on behalf of the petitioner, namely, the petitioner himself, Shiv Pyare Singh (P W 20) and Ram Swarup Tandon (P W 34), while on behalf of respondent No 1 have been examined Yuvaraj Singh himself (D W 12) and one Mahendra Kumar Jain (D W. 21).

The petitioner himself is an interested person.

Shiv Pyare Singh (P W 20) is the secretary of the Panchayat Adalat at Sankha. This witness cannot be said to be an interested witness. He belongs to village Bhaontar and there he used to go during holidays. It was on that occasion that he saw Yuvaraj Singh distributing cards to support respondent No 1. Although this witness and P W 34 Ram Swarup Tandon both belong to the same village (Bhaontar) the former makes absolutely no mention of P.S.P. procession being taken out in that village by Sri Yuvaraj Singh. But Ram Swarup Tandon (P W 34) mentions about it. A careful shifting and a comparison of the evidence of these witnesses leads us to the conclusion that the alleged charge levelled against Yuvaraj Singh for taking out a procession or distributing cards is not made out by any reliable evidence. Ram Swarup Tandon has stated in para 1 of his examination-in-chief as under: "He (Yuvaraj Singh) came to Bhaontar village with a procession, distributed cards there and canvassed amongst people to vote for Sri Saligram Jaiswal." In cross-examination he speaks of only one procession having been taken out. He also admits of the cards being distributed only once and that too only to two or three persons. Contrary to his averments in his examination-in-chief where he refers to one visit by Sri Yuvaraj Singh, he contradicts himself by stating that he made two visits, in one of which he led the procession and in the other distributed cards. In face of these apparently vacillating statements it is not safe to rely on the petitioner's testimony on that of the two witnesses.

Ram Swarup Tandon (P W 34) was a polling agent for respondent No 2 at Ajhua Polling station. He belongs to Bhaontar. He states that Yuvaraj Singh distributed cards for Praja Socialist Party there, and took out a procession. He names three men to whom cards were distributed. But he is an interested witness being the party worker in the village and has not impressed us.

In our opinion the evidence is on the whole very meagre to establish the case of the petitioner regarding Yuvaraj Singh who has denied these charges on oath and we believe him.

5. *Sri Ayaz Ahmad* (No. 5 of list C).—The oral evidence so far as his activities are concerned also consists of the same witnesses on behalf of the petitioner that have been produced in connection with Yuvaraj Singh. On behalf of respondent No. 1 we have the statements of Gyan Singh (D.W. 14) and Ayaz Ahmad himself (D.W. 19) to rebut the petitioner's evidence.

In this case also we are of opinion that the case for the petitioner has not been made out.

6. *Sri Lakshmi Narain* (No. 7 of list C).—Two witnesses have been produced for the petitioner to establish the activities of this man to support the candidature of respondent No. 1 and they are Badri Prasad (P.W. 31) and Daya Shanker Tripathi (P.W. 37). Their statements have been rebutted by Lakshmi Narain himself (D.W. 66).

The evidence of these two witnesses is contradictory, unimpressive and insufficient to meet the sworn denial by Lakshmi Narain (D.W. 66) himself. Badri Prasad (P.W. 31) deposed that Lakshmi Narain canvassed in Balakmau and Bhadwan villages and on the date of poll brought voters from outside and NOT from the P.S.P. camp. It is really surprising that in spite of feverish activity being shown by the residents of the two villages Balakmau and Bhadwan Lakshmi Narain would work "all one" unaided by local workers. Admittedly Lakshmi Narain was a polling agent at Kashia polling station and according to P.W. 37 Daya Shanker Tripathi he was seen only once coming out of the P.S.P. camp and once from the polling station. This is not in consonance with what Badri Prasad has stated.

In case of Lakshmi Narain also we are satisfied that the evidence produced does not warrant the conclusion that he participated in any election activity on behalf of respondent No. 1 in furtherance of his prospects at the election although he did work as a polling agent for Sri Saligram Jaiswal.

7. *Sri Sankatha Singh* (No. 9 of list C).—Only one witness, namely, Ayodhya Singh, has been produced on behalf of the petitioner so far as he is concerned. This Ayodhya Singh is a Sabhapati of the Gram Panchayat in his village and he says that Sankatha Singh shouted slogans on behalf of Sri Saligram Jaiswal in his village and distributed cards. The village to which he belongs is Bhakanda. He also says that he saw him bringing voters inside the polling station on the date of poll.

His evidence is rebutted by the statements of Tribhuvan Nath Sharma (D.W. 15), Ram Naresh Pande (D.W. 24), Ram Pratap (D.W. 71), and Sankatha Singh himself (D.W. 78). Ram Pratap (D.W. 71) is an independent witness and taking the evidence as a whole we are satisfied even in this case that it has not been established by the petitioner that Sankatha Singh took part in any activities in furtherance of the prospects of respondent No. 1 at the election.

8. *Sri Gyan Singh* (No. 11 of list C).—Only one witness has been produced on behalf of the petitioner, namely, Kesari Singh (P.W. 8) apart from Baljnath (P.W. 6) who has not deposed anything except that he saw him working as a polling agent. His statement has been rebutted by Gyan Singh himself (D.W. 57).

In this state of evidence also we are of the opinion that it has not been established that Gyan Singh at all took any part in any activity in furtherance of the prospects of respondent No. 1 at the election.

9. *Sri Ram Bhajan* (No. 14 of list C).—Two witnesses namely, Ram Narain (P.W. 32) and Amrit Lal (P.W. 41) have been produced to establish that he assisted respondent No. 1 in furtherance of his prospects at the election, and their statements have been rebutted by two witnesses on behalf of respondent No. 1, namely, Sharda Prasad (D.W. 60) and Ram Bhajan himself (D.W. 69).

Ram Narain saw Ram Bhajan only once distributing cards and doing canvassing for respondent No. 1 at the house of one Bhagwat Prasad. He was on his way to the house of a relation of his when he saw this being done only casually for a moment. He did not examine the card that was handed over by Ram Bhajan to Bhagwat Prasad. This witness cannot thus be much depended upon as establishing anything even though he may be the chairman of the Land Managing Committee of his village.

Amrit Lal (P.W. 41) says in the beginning of his examination-in-chief that Ram Bhajan did not work for any one at the last by-election. He saw Ram Bhajan roaming about in the camp of Sri Jaiswal. But later on he began to say that he took voters into the polling station on the date of poll from outside.

This meagre evidence has been amply rebutted by the statement of Ram Bhajan himself (D.W. 69) supported by the statement of Sharda Prasad (D.W. 60). And in this case also we are satisfied that the petitioner's case so far as Ram Bhajan is concerned has not been established.

10. *Sri Mohan Lal (No. 17 of list C).*—As to him we have only one witness on behalf of the petitioner, namely, Hiramani Sharma (P.W. 17), while Mohan Lal (D.W. 51) himself has been examined by respondent No. 1.

Hiramani Sharma says that Mohan Lal distributed cards for Sri Jaiswal to eight or ten persons in his presence and he spoke to Sri Sheo Kumar Pande, respondent No. 2, about the impropriety of Mohan Lal working at the election. This statement has been rebutted by Mohan Lal himself.

We consider this evidence to be too meagre to give any finding in favour of the petitioner so far as Mohan Lal is concerned.

11. *Sri Rajeshwar Prasad Garg (No. 2 of list D).*—Regarding this person three witnesses have been produced for the petitioner, viz. Avadh Narain (P.W. 12), Hamid Husain (P.W. 36) and Narain Singh (P.W. 40). Those for respondent No. 1 are Rajeshwar Prasad Garg (D.W. 7), Parsan (D.W. 36), Bhagwat Prasad (D.W. 39) and Avadh Narain (D.W. 64).

Avadh Narain (P.W. 12) who belongs to village Dhuskaha says that Rajeshwar Prasad Garg canvassed for the Praja Socialist Party and induced about ten to fifteen persons to vote for respondent No. 1. Besides this, he organised a meeting in village Mendraha in Rambagh. On the date of election he is also said to have brought some voters to the polling station and while functioning as a polling agent to have approached voters by coming out of the polling station, during lunch time and inducing some voters to cast their votes for respondent No. 1. He is a literate person and a teacher in the Lalbahadur Shastri School situated in Chail, but admits that he did not complain about Rajeshwar Prasad Garg having worked for Praja Socialist Party to any one for two or three weeks and casually told Shri Lachhmi Narain Bhatt at Sarai Agil about his (Rajeshwar Prasad Garg's) participating in the election activities only on being asked as to who were working at the polling station. He mentions Fassan Mian's name also in that connection. His statement does not contain any specific names of persons with whom Rajeshwar Prasad Garg might have canvassed support for respondent No. 1 and his statement is only of a very general nature.

Hamid Husain (P.W. 36) is an ex-zamindar who at present resides in village Berul although he claims that his ancestral house is situated in village Dhuskaha. He claims that he saw Rajeshwar Prasad Garg doing canvassing and distributing cards in village Dhuskaha. On the date of poll also he claims to have seen Rajeshwar Prasad Garg coming out of the polling station every half an hour or so and taking voters inside, telling them that they should vote for Sri Jaiswal. During cross-examination he admitted having left Dhuskaha on account of strained relations with his uncle. He, however, admits that he saw Rajeshwar Prasad Garg canvassing for respondent No. 1 in Dhuskaha *only once*. He names Bhagwat Brahman, Parsan, Mahadeo and Baijnath to whom Rajeshwar Prasad Garg approached in his presence, the first three at his door and the fourth in his field. He contradicts himself by saying that he saw him canvassing once more some two or three days after. He did not see any cards being distributed by Rajeshwar Prasad Garg although he says that one card was given to him by Rajeshwar Prasad. He claims to have seen Rajeshwar Prasad, taking about 175 to 225 voters along with him on the date of poll, but does not give the names of any.

Narain Singh (P.W. 40), the next witness, is the pradhan of Gaon Sabha of village Jathi and the Samajpati of the Samaj there. He is also a sarpanch of the Panchayati Adalat there. He deposes about Rajeshwar Prasad Garg having arranged a meeting in Rambagh and distributed notices of that meeting. He says that Rajeshwar Prasad canvassed for respondent No. 1 and distributed cards also for him. On the date of poll also according to him he was taking voters inside the polling station. This witness was born in the district of Banda although he claims that he has been residing in village Jathi since birth. He too does not give the names of any specific persons with whom Rajeshwar Prasad was seen by him canvassing support for respondent No. 1.

On behalf of respondent No. 1, Rajeshwar Prasad Garg (D.W. 7) has himself been produced and although he admits that he was a polling agent of Sri Saligram Jaiswal, he denies having participated in any other election activity on his behalf by canvassing for him or bringing voters. He says that Hamid Husain has absolutely no house in Dhuskaha as his old house there has been lying in ruins for seven or eight years. He says that Bhagwat Prasad, Baijnath and Mahadeo whom Hamid Husain has named were the workers of the respondent No. 1 in the village but none of them asked him to give any kind of assistance to Sri Jaiswal.

Parsan (D.W. 36) one of the persons with whom Rajeshwar Prasad is claimed to have canvassed support for respondent No. 1 denies having ever been approached by him. He also denies having seen Rajeshwar Prasad Garg at any meeting in

Rambagh in village Dhuskaha. On the date of poll, he says, that so long as he was there at the polling station he did not see Rajeshwar Prasad Garg doing any canvassing.

Bhagwat Prasad (D.W. 39) another person with whom Rajeshwar Prasad is said to have canvassed, denies this. As to Hamid Husain he says that he has no house in Dhuskaha. He also denies that any canvassing was done at the polling station.

Lastly, we came to Avadh Narain (D.W. 64), a student of B.A. class of Allahabad University. He was incharge of the P.S.P. election work in Jathi polling circle during the by-election. He denies Rajeshwar Prasad's participation in the election activities, or his taking any part in the meeting at Rambagh.

Hamid Husain was examined before us for quite a long time and his statement extends to about five typed pages but we were not impressed by his statement at all and he does not appear to us to be a truthful witness from the manner in which he gave the statement.

We are therefore of opinion that the evidence is not sufficient to establish Rajeshwar Prasad Garg's having given any kind of assistance whatsoever to respondent No. 1 in furtherance of his prospects at the election at all excepting that he acted as his polling agent at Jathi polling station.

12. *Sri Baijnath Prasad (No. 1 of list E).*—As to him six witnesses have been produced on behalf of the petitioner, namely, the petitioner himself (P.W. 1), Satya Deo (P.W. 10), Raja Ram Pande (P.W. 24), Dwarika Prasad (P.W. 33), Mathura Prasad (P.W. 35) and Ram Kumar Misra (P.W. 39). As against this respondent No. 1 has examined Asad Ullah Kazmi (D.W. 1), Daya Narain (D.W. 10), Maharaj Prasad (D.W. 23), Jagat Narain Trivedi (D.W. 33), Jagannath Prasad (D.W. 35) and Baijnath Prasad himself (D.W. 37) to rebut the evidence produced by the petitioner.

The petitioner himself is after all an interested person. He claims to have seen Baijnath Prasad along with Jagat Narain, Maharaj Prasad and Jagannath Prasad working for respondent No. 1, distributing cards, canvassing for him, taking out processions and shouting slogans in support of his candidature. He also says that he saw them working inside the polling station on the date of poll and outside as well, persuading voters to cast their votes for respondent No. 1 and taking them inside along with him. He does not give the names of any specific persons with whom Baijnath Prasad might have canvassed support for respondent No. 1. He is as we have already pointed out an interested witness.

Satya Deo (P.W. 10) also deposes about Baijnath Prasad and his other three companions named by the petitioner in his statement on oath working for respondent No. 1 on the date of election at the polling station. He also claims to have seen them taking out processions and distributing cards. He does not, however, name any one to whom Baijnath Prasad might have distributed cards before him. In his cross-examination he says that only from a distance did he see Jagat Narain Trivedi canvassing support for respondent No. 1, but he did not notice others including Baijnath Prasad doing so. This witness is a teacher in a District Board School. The criticism against him is that the chairman of the Education Committee being a congressman, he has come to support the petitioner who is also an influential member of the District Board.

Raja Ram Pande (P.W. 24) worked on behalf of the Congress during 1952 General Elections, and also during the last bye-election. He is the next witness who claims to have seen Baijnath Prasad canvassing for respondent No. 1 in Daranagar and Thulbula. This witness is a resident of Daranagar. Baijnath Prasad is also a resident of Daranagar. It is stated that he saw Baijnath Prasad canvassing at the house of only one person, viz. Bachchu Lohar in this village. One single instance of approach in connection with canvassing in Daranagar gives no credit to this witness who claims to have been one of the active workers for the Congress party. He mentions three names, viz. Manni Lal, Ram Rakhan and Bodhi Lal with whom he canvassed for respondent No. 1 in village Thulbula, but in his examination-in-chief he has enumerated the names of six villages included within the field of his activities and this does not mention village Thulbula. We cannot therefore place any reliance on his statement regarding this village also.

Dwarika Prasad (P.W. 33) is the next witness. He holds many offices being a sarpanch, Panchayati Adalat Sipah, the pradhan of the Gaon Sabha there, the sarpanch of the Cooperative Society of Habbunagar, a member of the N.E.S. Block Advisory Committee, Kara, vice-president of the Cooperative Union in Kara and a member of the District Cooperative Federation. There is, however, a case proceeding against him in criminal court under section 420, I.P.C. in connection with the cooperative society of which he is a member. Sri Sheo Kumar Pande, respondent No. 2, the rival candidate of respondent No. 1, is one of his counsel

in that case. He does not name any person whom he might have seen being approached by Baijnath Prasad. As a whole we do not consider him to be reliable witness. He is as a matter of fact supporter of respondent No. 2 and in the General Elections of 1952, he even worked for him.

Mathura Prasad (P.W. 35) is the next witness. He is also a teacher of the District Board School. He was working as a polling clerk on the date of election at Daranagar. His also is a general statement without giving any specific names of persons whom Baijnath Prasad might have approached in connection with his canvassing in support of respondent No. 1.

Ram Kumar Misra (P.W. 39) has all along been a member of the District Congress Committee and has since 1930 been a very active worker of that party. He worked for the Congress even at the last election. He is so much prejudiced against Sri Saligram Jaiswal, respondent No. 1, that during his cross-examination he was not prepared to admit that Sri Jaiswal had been the General Secretary of the District Congress Committee prior to his joining the Praja Socialist Party or that he was ever a member of the District Congress Committee, but he was not prepared to deny this. His primary concern seems to have been to depose with the consciousness of the effect that his statement would have on the result of the case. He is obviously an interested witness and we cannot place reliance on his testimony.

On behalf of the respondent No. 1 we have already given the names of the witnesses produced in connection with the case of Baijnath Prasad. Baijnath Prasad himself has appeared as D.W. 37 to deny all the activities complained of and attributed to him. Jagat Narain Trivedi (D.W. 33) and Jagannath Prasad (D.W. 35) who are also said to have worked along with him were produced to deny the allegations. The other witnesses are Asad Ullah (D.W. 1) an agent and worker of respondent No. 1, Daya Narain and Maharaj Prasad.

We are thus convinced that Baijnath Prasad took no part in any activity on behalf of respondent No. 1 apart from his acting as a polling agent for him at Daranagar polling station.

13. *Sri Jagannath Prasad (No. 2 of list E).*—The evidence of the petitioner regarding him is the same as that produced in connection with Baijnath Prasad. The witnesses produced on behalf of the respondent are also the same. Jagannath Prasad himself is among them being D.W. 35.

Without entering into any fresh discussion in this connection we hold that this person also has not been proved to have taken any part in election activities on behalf of respondent No. 1 apart from his acting as a polling agent for him at Daranagar.

14. *Sri Ganesh Prasad Misra (No. 3 of list E).*—Only one witness has been produced on behalf of the petitioner namely, Sheo Pyare Singh (P.W. 20), while on behalf of respondent No. 1 only one witness namely Hira Lal (D.W. 79) has been examined.

Sheo Pyare Singh (P.W. 20) could remember the name of this man only from among the polling agents working on behalf of respondent No. 1 at Sankha polling station and he could not give any explanation why he did not remember the name of any one else. He deposes about his having taken active part on behalf of respondent No. 1 in connection with the election. He is rebutted by Hira Lal (D.W. 20) who was one of the polling agents at polling station Sankha.

On balancing the evidence produced we hold that this man (Ganesh Prasad Misra) also took no part in the election activity connected with respondent No. 1 apart from his acting as a polling agent for him at Sankha.

15. *Sri Sarjoo Prasad (No. 5 of list E).*—The petitioner has examined himself (P.W. 1), Sheo Prasad (P.W. 19), Mohammed Usman (P.W. 27) and Dwarika Prasad (P.W. 33) while on behalf of respondent No. 1 Asad Ullah (D.W. 1), Husain Bux (D.W. 16), Anwar Ali (D.W. 17), Ram Nath (D.W. 49), Sarjoo Prasad himself (D.W. 65), Ram Das (D.W. 67) and Manna Lal (D.W. 68) have been produced.

The petitioner himself is an interested witness.

Sheo Prasad (P.W. 19) names Manna Morai, Anwar Ali, Banarsi Lal, Ram Das, Sita Ram, Ram Nath and Mahadeo as the persons who were brought within the polling station on the date of poll, by Sarjoo Prasad and Madho Lal. He however does not name any person specifically with whom Sarjoo Prasad might have canvassed on other days for the support of respondent No. 1.

Mohammed Usman (P.W. 27) who is a Parol Magistrate also deposes about Sarjoo Prasad and Madho Lal taking voters inside the polling station on the date of poll. In his cross-examination, however, he says that he did not actually see Sarjoo Prasad bringing the voters inside the polling station although he saw him in the camp of the Praja Socialist Party outside the polling station.

Dwarika Prasad (P.W. 33) has already been dealt with in connection with Baijnath Prasad, and we do not want to add anything to what we have already said there.

On the other hand, among the witnesses for respondent No. 1, named just above, are Husain Bux and Anwar Ali, Ram Das and Manna Lal Morai (D.Ws. 16, 17, 67 and 68) with whom Sarjoo Prasad is said to have canvassed support for respondent No. 1 to deny that they were so approached at all. Sarjoo Prasad himself also has been examined as D.W. 65.

After a survey of all this evidence as a whole we hold that it has not been established that Sarjoo Prasad took any part in any election activity on behalf of respondent No. 1, apart from his acting as a polling agent.

16. *Sri Madho Lal (No. 6 of list E).*—In this connection only one witness has been examined by the petitioner, namely, Shco Prasad (P.W. 19). On the other hand, on behalf of respondent No. 1 have been examined Asad Ullah Kazmi (D.W. 1), Husain Bux (D.W. 16), Anwar Ali (D.W. 17), Ram Nath (D.W. 49), Madho Lal himself (D.W. 56), Ram Das (D.W. 67) and Manna Lal Morai (D.W. 68).

In this case also we are of opinion that no case has been established by the petitioner as to Madho Lal's participation in any election activity on behalf of respondent No. 1 apart from his acting as a polling agent for him at Kara.

17. *Sri Nand Kishore (No. 8 of list E).*—The petitioner has examined in this connection Ram Khelawan Tewari (P.W. 9), Surendra Nath (P.W. 15), Ram Kumar Pande (P.W. 26) and Daya Shankar Tripathi (D.W. 37); while respondent No. 1 has produced Sooraj Din (D.W. 8), Badri Prasad (D.W. 9), Asharf Lal (D.W. 27) and Nand Kishore himself (D.W. 58).

Ram Khelawan (P.W. 9) states that Nand Kishore distributed cards for respondent No. 1 in village Maheshpur at his (Ram Khelawan's) house and in the house of Raja Ram. Maheshpur is not among the list of places in the petition at which Nand Kishore is shown to have worked for respondent No. 1. And as such the statement of this witness in that connection cannot be of much help to us for we cannot travel beyond the scope of the petition itself. Nand Kishore is also said to have shouted P.S.P. slogans and taken out processions in village Kashia. Ram Khelawan could not say if Nand Kishore did anything outside the polling station on the date of poll. Ram Khelawan belongs to village Maheshpur and most of the evidence that he has given relates to his village. His statement, therefore, cannot be of any help to us as his village is not indicated in the petition as a centre of activity on the part of Nand Kishore to support the candidature of respondent No. 1.

Surendra Nath (P.W. 15) claims to have seen Sooraj Din and Nand Kishore taking out processions and distributing cards for respondent No. 1 in village Kashia. He also says that on the date of poll they took voters inside the polling station. He however does not give the names of any specific persons who might have been approached by them in connection with any election activity.

Ram Kumar Pande (P.W. 26) does not say any thing about Nand Kishore in examination-in-chief except that he was a polling agent for respondent No. 1 at Kashia. In cross-examination, however, he says that during the period that he was at Kashia polling station he saw him along with Sooraj Din coming out of the polling station and taking some voters along with him. He does not name any of the voters whom Nand Kishore might have so taken along with him.

Daya Shankar Tripathi (P.W. 37) also states about Nand Kishore along with Sooraj Din taking voters inside the polling station on the date of poll. He too does not name any person specifically whom he might have seen being so taken in by Nand Kishore.

The witness on behalf of the respondent No. 1 named above including Nand Kishore himself deny that he at all took part in any election activity other than acting as polling agent for respondent No. 1. After surveying the entire evidence produced we are of the opinion that in this case also it has not been established that Nand Kishore assisted respondent No. 1 in furtherance of his prospects at the election apart from acting as polling agent at Kashia.

18. *Sri Sooraj Din (No. 9 of list E).*—The same evidence has been produced on behalf of the petitioner in his case as in the case of Nand Kishore and also the same evidence on behalf of respondent No. 1.

Without entering into a similar discussion again we hold that Sooraj Din also has not been proved as having taken any part in the election activity on behalf of respondent No. 1 other than acting as polling agent only for him at Kashia.

19. *Sri Jhali Singh (No. 2 of list F).*—Only one witness namely Jagannath Prasad (P.W. 5) has been produced on behalf of the petitioner so far as he is concerned, while on behalf of respondent No. 1 have been produced Indrajit Misra (D.W. 4), Kedar Nath (D.W. 53) and Jhali Singh himself (D.W. 55).

P.W. 5 who has been produced for the petitioner has not named any persons specifically with whom Jhali Singh might have canvassed support for respondent No. 1 or whom he might have taken into the polling station on the date of poll.

The balance in this case also is in favour of respondent No. 1 and as to Jhali Singh as well we hold that it has not been established that he took any part in election activities on behalf of respondent No. 1 to support his candidature except that he acted as a polling agent at Hinauta polling station.

20. *Sri Ram Deo* (No. 4 of list F).—So far as he is concerned two witnesses have been produced by the petitioner namely, Nanku (P.W. 2) and Hamid Husain (P.W. 36) while on behalf of respondent No. 1 has been produced Ram Deo himself (D.W. 20).

Nanku (P.W. 2) states that Ram Deo worked for Praja Socialist Party during the election, he distributed cards to the voters at the polling station and took them inside the polling station to vote. He saw him outside the polling station only although he worked as a polling agent also. His is a very vague and general statement which does not even give the name of the polling station at which Ram Deo might have worked and as such his statement cannot be of much help to us in establishing as to whether he at all worked at the places named in the petition where he is said to have worked for respondent No. 1.

Hamid Husain (P.W. 36) claims to have seen Ram Deo distributing cards in village Berui. He also claims to have seen him taking voters along with him. We have already had occasion to discuss the merits of his statement in connection with Rajeshwar Prasad Garg and have observed already that we were not much impressed by him.

Ram Deo, however, denies all this.

In this case as well in our opinion the balance of evidence is not in favour of the petitioner and the evidence is not sufficient for giving a finding that Ram Deo took any part in the election activity on behalf of respondent No. 1 other than acting as his polling agent at Berui.

We now come to list G, that is, the list of Mukhias who are said to have acted for respondent No. 1, and done various acts in that connection in various villages and on the date of election. This list consists of five persons named therein, out of whom the case of Daljeet Singh (No. 3) has been given up altogether. Of the remaining four, as already pointed out above, the two viz., Raja Ram Tewari and Rudra Pratap Singh, have not been proved to have been appointed as polling agents at all—far from their acting as such. Noorul Huda is said to have been appointed polling agent at Kashia while in fact he was appointed polling agent for Kokhraj polling station and even there he did not act as such. We would, therefore, first discuss the case of the remaining Mukhia Mohammed Idu only for the present.

21. *Sri Mohammed Idu* (No. 1 of list G).—As to him the petitioner has examined himself (P.W. 1), Sheo Prasad (P.W. 19), Mohammed Usman (P.W. 27), Dwarika Prasad (P.W. 33) and Ram Kumar (P.W. 39). On the other hand, respondent No. 1 has examined Asad Ullah Kazmi (D.W. 1), Mohammed Idu himself (D.W. 11), Rang Nath Sharma (D.W. 13), Husain Bux (D.W. 16), Anwar Ali (D.W. 17), Ram Nath Gadaria (D.W. 49), Ram Das (D.W. 67) and Manna Morai (D.W. 68).

The petitioner (P.W. 1) claims to have seen Idu Mukhia (i.e. Mohammed Idu) distributing cards, doing canvassing, taking out processions and shouting slogans at Kara and on the date of poll working as polling agent and also bringing voters into the polling station. On the other hand, Mohammed Idu denies having done all this. Asad Ullah Kazmi (D.W. 1) was the person who claims to have approached Mohammed Idu to work as polling agent for respondent No. 1. Mohammed Idu states that he worked as a polling agent only for a short time and during that period he remained inside throughout after which he asked Asad Ullah who was taking care of the election on behalf of respondent No. 1, outside the polling station Kara to relieve him. Even though the petitioner, as would appear from his statement on oath, knew that mukhias ought not to assist any candidate at the election he did not make any complaint to the presiding officer or the district authorities that they were doing so. The only complaint that he made in writing was to Sri M. P. Shukla, the person working on behalf of the Congress in connection with the election.

Sheo Prasad (P.W. 19) says that Mohammed Idu took along with him Manna Morai, Anwar Ali, Banarsi Lal, Ram Das, Sita Ram, Ram Nath and Mahadev voters, into the polling station; but Manna Morai (D.W. 68), Anwar Ali (D.W. 17), Ram Das (D.W. 67) and Ram Nath (D.W. 49) have themselves been examined by



respondent No. 1 to deny that Idu mukhia at all took them inside the polling station to vote. Ram Nath further says that his father Sita Ram also came along with him and was not taken into the polling station by Idu mukhia.

Mohammed Usman (P.W. 27) does not name any persons specifically who might have been taken in by Idu mukhia along with him to the polling station on the date of poll.

Dwarika Prasad (P.W. 33) says that Idu Mian canvassed to Ram Narain and Manna Lal Morai and voters also were taken by him into the polling station. This Dwarika Prasad has been a Congress man though he says that he was not one at the present time.

Ram Kumar Misra (P.W. 39) claims himself to be a public speaker. He has been an old worker of the Congress. We have already discussed about him as a witness in connection with our discussion regarding Baijnath Prasad that he does not appear to be a truthful witness.

On the other hand, respondent No. 1 examined Idu mukhia himself and four such persons who are said to have been taken inside the polling station by Mohammed Idu to deny that they were so taken there or Idu mukhia acted for respondent No. 1 in connection with the election.

On the whole the evidence in our opinion is not such that may justify us to give a finding that Idu mukhia (Mohammed Idu) not only acted for a short time as polling agent at Kara for respondent No. 1 but also canvassed for him, took the voters on the date of poll into the polling station on his behalf and in any way assisted the respondent, Sri Saligram Jaiswal, in furtherance of his prospects at the election.

We have so far dealt with the persons in lists A and C to G, who were appointed polling agents by respondent No. 1 and who also acted as such. We will now proceed with the discussion about the persons who were appointed polling agents but did not act as such, or, in any case, have not been proved to have acted as such. They are: Jagat Narain Trivedi (No. 1 in list A and also No. 1 in list D), Chandrika Prasad Singh (No. 12 in list C) and Noorul Huda (No. 4 in list G).

The case of Noorul Huda is a bit different from the cases of others. Jagat Narain Trivedi was appointed polling agent for Daranagar polling station, Chandrika Prasad Singh for Kanaili polling station and Noorul Huda for Kokhraj polling station. In list G, however, read with paragraph 12 (g) of the petition, Noorul Huda is described as having been appointed polling agent for Kashia polling station. Thus, so far as Noorul Huda is concerned the allegation in the petition that he was appointed polling agent for Kashia is not borne out by the facts, although in cases of Jagat Narain Trivedi and Chandrika Prasad Singh they were actually appointed polling agents at the places at which they are alleged to have been so appointed.

*Sri Jagat Narain Trivedi:* He is No. 1 in list A and also No. 1 in list D. As to him the petitioner has got himself examined as (P.W. 1), and has produced Satya Deo (P. W. 10), Raja Ram Pande (P. W. 24), Dwarika Prasad (P. W. 33), Mathura Prasad (P. W. 35) and Ram Kumar Misra (P. W. 39) while on behalf of respondent No. 1 have been examined Asad Ullah Kazmi (D. W. 1), Daya Narain (D. W. 10), Maharaj Prasad (D. W. 23), Jagat Narain Trivedi himself (D. W. 33), Jagannath Prasad (D. W. 35) and Natthu (D. W. 47).

P.W. 1 is the petitioner himself. He claims to have seen Jagat Narain Trivedi working for respondent No. 1 in Daranagar circle. He also claims to have seen him on the date of poll outside the polling station persuading the voters to vote for Sri Saligram Jaiswal, respondent No. 1, and taking them into the polling station.

Satya Deo (P.W. 10) is said to have seen him working as polling agent at Daranagar (the fact that he was working as polling agent has, however, not been established, although it has been proved that he was appointed as a polling agent). He also says that he saw him presiding at a meeting in Daranagar held in support of respondent No. 1 and on one occasion handing over cards to Kedar Nath Lohar, Damodar Khattri and many others.

Raja Ram Pande (P.W. 24) worked on behalf of the Congress party which party respondent no. 2 represented during the election and also during 1952 Elections. He claims to have seen Jagat Narain working for the Praja Socialist Party at the by-election in question. Besides this he has not given any specific instance as to what work he actually did in that connection.

Dwarika Prasad (P.W. 33) has already been discussed above in connection with Baijnath Prasad's case and although he holds many posts we think he is not a reliable witness for the reasons already stated. He was a worker for

respondent No. 2 at the 1952 Elections. He points out that Jagat Narain was working as polling agent at Daranagar although it has already been pointed out that he did not actually work as such.

Mathura Prasad (P.W. 35) also claims to have seen Jagat Narain distributing cards, taking out processions, holding meetings, and canvassing for respondent No. 1. He further claims to have seen him canvassing on the date of poll and bringing the voters from outside into the polling station. He too says that Jagat Narain was working as polling agent while as already pointed, it has been established that he did not work as such.

Ram Kumar Misra (P.W. 39) also supports the case for the petitioner. He too supports all the charges against Jagat Narain Trivedi regarding his acting in furtherance of the prospects of respondent No. 1 at the election. He is however a member of the Congress party and has been on the District Congress Committee and also on the Provincial Congress Committee. He is thus a party man of respondent No. 2 and the petitioner whom he has come to support. His value as a witness has been discussed already in connection with the case of Baijnath Prasad also.

On behalf of the respondent No. 1 have been produced as already pointed out six witnesses including Jagat Narain Trivedi himself who deny that Jagat Narain Trivedi at all played the part which is assigned to him in connection with the furtherance of the prospects of respondent No. 1 at the election. Natthu (D.W. 47) who is one of the persons to whom card is said to have been given denies that he was given card by Jagat Narain Trivedi.

Considering the evidence as a whole we are not satisfied that Jagat Narain Trivedi worked as polling agent on the date of poll or he did any act in furtherance of the prospects of respondent No. 1 at the election.

*Shri Chandrika Prasad Singh:* He is No. 12 in list C. As to him only one witness has been produced by the petitioner, namely, Kesari Singh (P.W. 8) while respondent No. 1 has produced one Gyan Singh (D.W. 57) and also himself (D.W. 59) in rebuttal.

This Kesari Singh was also produced to establish the part assigned to Gyan Singh, No. 11 in list C. In our opinion the evidence in connection with Chandrika Prasad Singh is so meagre that we find it impossible to hold that he at all participated in any activity on behalf of respondent No. 1 at the election which may lead one to infer that he assisted respondent No. 1 in furtherance of his prospects at the election.

*Sri Noorul Huda:* He is described as No. 4 in list G. As to him it would appear from paragraph 12 (g) of the petition that the allegations against him were that he was appointed polling agent on the date of poll, that he acted as polling agent for the station for which he was so appointed, that he not only performed the statutory duties of a polling agent but also left the polling station as occasion arose, went outside the polling station and persuaded different voters to vote for respondent No. 1 and did other election work on the date of poll outside the polling station for him. Before the date of poll also he is said to have canvassed for respondent No. 1 in his village of residence, of which he was a mukhia, by distributing pamphlets in support of respondent No. 1, the distribution of cards to the voters on his behalf, the canvassing of his support, arranging meetings and processions and participating in them since before a month of the date of election. List G contains the polling stations at which they (mukhias) are said to have worked.

Although the polling station mentioned in the list is Kashia the evidence that has been adduced relates to Kokhraj. As it was for the petitioner to confine himself to the production of evidence only relating to the place mentioned in the petitioner, any evidence produced to the contrary does not merit consideration.

From list G, read with paragraph 12 (g) of the petition, it would appear that Noorul Huda is alleged to have been appointed as polling agent at Kashia Polling station and to have worked and canvassed in Baghelapur and Kashia.

The oral evidence that has been led in connection with this man consists of the statements of the petitioner himself as P.W. 1, Surendra Nath (P.W. 15), Lakhon Lal (P.W. 30) and Babu Lal (P.W. 47) while on behalf of the respondent No. 1 have been examined Sooraj Din (D.W. 8), Badri Prasad (D.W. 9),

Sital Din Morai (D.W. 18), Hamid Husain (D.W. 25), Ram Adhar Morai (D.W. 26), Ashraf Lal (D.W. 27), Ashfaq (D.W. 41) and Bachchoo Morai (D.W. 52).

Ganga Prasad Pathak, the petitioner, could not recollect if Noorul Huda worked as polling agent for respondent No. 1 in Kashia or not.

Surendra Nath claims to have seen Noorul Huda canvassing in village Baghelapur for Sri Jaiswal. This witness belongs to village Kashia but he says that he had gone to Baghelapur along with a Morai as the latter's daughter-in-law was not being sent by her relatives to his house. He says that people generally make good use of his offices in such matters in that locality. On arriving in village Baghelapur at the door of the relatives of the daughter-in-law of that Morai along with whom he had gone there they summoned some respectable persons from the locality including Noorul Huda to get the matters settled. He, however, could not give the names of the relatives at whose door he had gone to bring the daughter-in-law with that Morai. The other Morais of that village also were called at that panchayat and Noorul Huda is said to have been brought there by those persons themselves at whose house they had gone. It was there that discussion started about the impending elections and at that discussion Noorul Huda supported the candidature of Sri Jaiswal.

Noorul Huda, after all, had a right to vote. He had not gone there purposely for getting support for any candidate. It was only during the discussion as to the election that he happened to give his opinion about the suitability of a certain candidate. Even if this witness is believed to be speaking the truth his evidence does not go to establish that Noorul Huda was at all canvassing or doing anything in furtherance of the prospects of respondent No. 1 at the election. Apart from this Sital Din Morai (D.W. 18), Ram Adhar Morai (D.W. 26) and Bachchoo Morai (D.W. 52) have been produced from Kashia and Baghelapur villages among the people belonging to Morai community to establish that no such trouble ever arose in Baghelapur regarding the sending of anybody's daughter-in-law back to her home in Baghelapur. This evidence has been produced in rebuttal of Surendra Nath's statement in so far as it supports the case of the petitioner so far as Noorul Huda is concerned.

Lakhan Lal (P.W. 30) has been produced to establish that on the date of poll Noorul Huda was bringing voters at Kokhraj polling station from Baghelapur village. This, as we have already pointed out, is contrary to the petitioner's case taken in the petition inasmuch as it was at Kashia polling station that Noorul Huda is said to have brought the voters on the date of poll according to the allegations made therein and not to Kokhraj polling station. Any evidence produced contrary to the case taken up in the petition itself should be discarded, for, it indicates that either the petitioner was not careful in ascertaining facts before reducing them to writing in his petition or he just made certain allegations in the hope that he might be able to substantiate them later on by producing any evidence that he might be able to procure.

Similarly, the statement of Babu Lal (P.W. 47) cannot be of much help to us as he too is a witness of Noorul Huda's bringing voters to Kokhraj polling station which is not the case taken up in the petition. He has no doubt also named certain persons to whom he saw cards being given by Noorul Huda but this he saw only while he was on his way to purchase provisions at the place of one Siddiq Mahajan. He is thus a mere chance witness so far as this part of the case is concerned.

We, therefore, hold that even in the case of Noorul Huda it is not established that he did any act in furtherance of the prospects of respondent No. 1 at the election.

We are now left with the case of those persons who were neither appointed as polling agents for respondent No. 1 nor did act as such.

In his petition such persons were described by the petitioner in list B appended thereto. These persons who are said to be sarpanches of various Panchayati Adalats are Lakhan Lal, Balanath, Ram Pal Singh, Ram Das and Indra Pal Singh. Even among these the learned counsel for the petitioner during argument gave up the cases of Lakhan Lal and Indra Pal Singh. We are thus left with Balanath, Ram Pal Singh and Ram Das only. Apart from these Raja Ram Tewari and Rudra Pratap Singh of list G also are the persons who are said to have supported respondent No. 1 even though they were mukhias but they were also said to have been appointed as polling agents and

also to have acted as such. We have already found that they were neither appointed as such nor did they act in that capacity. Their cases also should be considered along with the cases of those persons who are said to have acted for respondent No. 1 against the provisions of section 123 (8) of the Representation of the People Act, 1951, even though they were not the polling agents of the candidate whom they were supporting.

We may now take up their cases one by one.

**Sri Balanath:** (No. 2 of list B). As for him the petitioner has got examined himself (P.W. 1), and have produced Ram Khelawan (P.W. 9), Surendra Nath (P.W. 15), Ram Kumar Pande (P.W. 26) and Daya Shanker Tripathi (P.W. 37). As against this respondent No. 1 has examined Balanath himself, (D.W. 22), and has produced Asharfi Lal (D.W. 27), Ram Dulare (D.W. 45) and Nand Kishore (D.W. 58).

The petitioner, Ganga Prasad Pathak, says that he saw Balanath working in Kashia. This comes out in his cross-examination although in his examination-in-chief he does not say anything particular about him.

Ram Khelawan (P.W. 9) states that he saw Balanath canvassing support of many persons for respondent No. 1. He was outside the polling station Kashia on the date of poll during the lunch interval and there he canvassed for respondent No. 1. This Ram Khelawan is a teacher in a primary school at Kashia and was a polling clerk at the polling station Kashia. He came out to make water for some time and from a distance of 150 yards he saw Balanath bringing voters to the camp of respondent No. 1. He was not on the look out to see him but still he saw him doing this act. Needless to say, that on seeing from a distance of 150 yards one cannot say if the persons that he saw going along with Balanath were being so taken by him as a supporter of respondent No. 1, Sri Saligram Jaiswal, or they were some persons going in the same direction in which he was going. During the lunch interval also, he says, he came out of the polling station and he saw Balanath canvassing. He did not go to the P.S.P. camp itself but he still saw him canvassing at that camp. This sort of witness does not inspire our confidence and we cannot from his very vague evidence come to a finding that Balanath was at all seen by him doing anything for respondent No. 1 on the date of poll round about the polling station.

Ram Kumar Pande (P.W. 26) who belongs to Bidhanpur claims to have seen Balanath distributing cards, doing canvassing and taking out procession for respondent No. 1. On the date of poll also he is said to have been handing over papers to the voters at the camp of respondent No. 1 and taking them to the polling station to cast their votes in favour of respondent No. 1. The procession was seen by him on his way to Bisara as he was passing vi Bidhanpur.

Daya Shanker Tripathi (P.W. 37) also saw Balanath supporting the candidature of Sri Saligram Jaiswal in his village and distributing cards for him. He also claims to have seen Balanath sitting at the camp of respondent No. 1 at Kashia on the date of poll. This witness has leanings towards the Congress and is thus a supporter of the party to which the petitioner and respondent No. 2 belong.

On the other hand Balanath (D.W. 22) himself has denied his participation in any of these activities.

Asharfi Lal (D.W. 27) who belongs to Kashia also denies that Balanath at all worked for respondent No. 1 in Kashia where he is said to have so worked.

Ram Dulare (D.W. 45) is a resident of village Bidhanpur and he has categorically denies if Balanath took part in canvassing for respondent No. 1 or in any other election work.

Similarly, Nand Kishore (D.W. 58) denies Balanath's participating in any of the activities complained of.

Balancing all this evidence as a whole we have come to the conclusion that in the case of Balanath also it has not been established that he participated in any of the activities connected with the support of the candidature of respondent No. 1.

**Sri Ram Pal Singh:** (No. 3 in list B): As to him three witnesses have been produced for the petitioner including the petitioner himself, besides Nathu Ram (P.W. 23) and Swyamber Singh (P.W. 25). On the other hand respon-

dent No. 1 has got examined Raja Ram Tewari (D.W. 3), Bachchoo Lal Morai (D.W. 28), Angad Singh (D.W. 29), Sukhdeo (D.W. 30) and Ram Pal Singh himself (D.W. 77).

The petitioner (P.W. 1) has only stated that he saw Ram Pal Singh, sarpanch of the Panchayati Adalat, Alwara, working in his own circle for respondent No. 1. His is a very general statement and does not lead us anywhere.

Nathoo Ram (P.W. 23) who is the secretary of the Panchayati Adalat, Alwara, claims to have seen Ram Pal Singh on his way to office distributing cards to and canvassing support for respondent No. 1 from Angad Singh. This Angad Singh has been produced as D.W. 29 and he denies if any card was distributed to him by Ram Pal Singh. He says that one Ram Chandra gave him a card and not Ram Pal Singh.

Swyamber Singh (P.W. 25) was a worker of Sri Sheo Kumar Pande, respondent No. 2. He claims to have seen Ram Pal Singh along with Raja Ram Tewari at the house of Sukhdeo Pasi and Chhangu Morai in village Alwara doing canvassing for respondent No. 1. Sukhdeo has been produced by respondent No. 1 and he has denied that this was done. Evidence has been produced that there is no one of the name of Chhangu Morai alive in village Alwara consisting of the statement of Bachchoo Lal Morai (D.W. 28).

Apart from Angad Singh and Sukhdeo Pasi, Ram Pal Singh (D.W. 77) has himself denied his participation in any of the activities alleged and two witnesses Bachchoo Lal (D.W. 28) and Raja Ram Tewari (D.W. 3) have been examined to deny that Ram Pal Singh ever did any canvassing or any other thing to support respondent No. 1. As already pointed out Bachchoo Lal also says that no one of the name of Chhangu Morai ever lived in village Alwara.

Considering the evidence in connection with Ram Pal Singh also we are of opinion that in his case too it has not been established that he did anything by way of assistance in furtherance of the prospects of respondent No. 1 at the election.

*Sri Ram Das: (No. 4 of list B).* As to him the petitioner has got himself examined and has produced Chandra Shekhar (P.W. 13) and Swyamber Singh (P.W. 25). As against them respondent No. 1 has produced Ram Das himself (D.W. 73), besides Ram Deo (D.W. 32) and Ram Khelawan (D.W. 75). Respondent No. 1 also has been examined to deny if he ever went to the house of Ram Das where he is stated to have gone during his electioneering by one of these petitioner's witnesses.

The petitioner, Ganga Prasad Pathak, says nothing particular about Ram Das except that he saw him canvassing within his circle.

Chandra Shekhar (P.W. 13) says that he saw Ram Das moving about with Sri Jaiswal in his car during the days of election. He also claims to have seen him preparing cards for Sri Saligram Jaiswal and distributing them to one or two persons. According to him Sri Jaiswal used to stop at the door of Ram Das whenever he came to the village. He however, does not name those two persons to whom Ram Das might have distributed cards. As opposed to him Sri Saligram Jaiswal (D.W. 59) denies if he ever moved about with Ram Das in car or he ever came to village Garhi at all during electioneering as it lay on the other side of the canal and his car could not cross it.

Swyamber Singh (P.W. 25) says that he saw Ram Das canvassing at the door of Nathu Halwai in village Garhi and in village Raksauli at the door of Hari. This witness was a worker for respondent No. 2 during the bye-election.

Ram Deo (D.W. 32) denies if Ram Das at all worked for Sri Saligram Jaiswal in his village. He, however, admits that Ram Das is related to Sri Saligram Jaiswal but that alone does not go to show that he must have worked for respondent No. 1.

Ram Das (D.W. 73) himself has denied that he at all worked for respondent No. 1 at the bye-election.

Ram Khelawan (D.W. 75) who belongs to village Garhi also denies the participation of Ram Das in any election activity on behalf of respondent No. 1.

Taking the balance of this evidence we come to the conclusion that in case of Ram Das also it has not been established that he did anything in furtherance of the prospects of respondent No. 1 at the bye-election.

*Sri Raja Ram Tewari*: (No. 2 of list G).—As to him only two witnesses have been produced on behalf of the petitioner, namely, Nathoo Ram (P.W. 23) and Swyamber Singh (P.W. 25), while on behalf of respondent No. 1 Raja Ram Tewari (D.W. 3) himself has been produced to deny his complicity and three other witnesses, namely, Bachchoo Lal, Angad Singh and Sukhdeo.

Nathoo Ram claims to have seen him and Ram Pal Singh doing canvassing only once while he was on his way to office. While Raja Ram Tewari is said to have distributed card to Bachchoo Lal, Ram Pal Singh is said to have distributed cards to Angad Singh. Both these persons have been produced to deny the same. Nathoo Ram admits that he has not mentioned having seen this to anyone so far but still it is strange that he is produced as a witness by persons who could have never known as to what he had seen.

Swyamber Singh claims that he saw Raja Ram Tewari canvassing support of Sukhdeo Pasi and Chhangu Morai for respondent No. 1. Sukhdeo Pasi denies this and Bachchoo Lal (D.W. 28) denies if there is any person in the village of the name of Chhangu Morai.

As against this, Raja Ram Tewari has also been produced to deny if he did anything to support the candidature of respondent No. 1 at the election.

This evidence in our opinion is not enough to establish the petitioner's case so far as Raja Ram Tewari is concerned.

Lastly, we come to *Rudra Pratap Singh* (No. 5 of list G). As to him have been examined Ram Das (P.W. 38), another Ram Das (P.W. 44) and Baboo Lal (P.W. 46) on behalf of the petitioner, while respondent No. 1 has examined Lal Bahadur Singh Vakil (D.W. 5), Des Raj (D.W. 62), Bhundu Koeri (D.W. 74) and Rudra Pratap Singh (D.W. 76) himself.

Ram Das (P.W. 38) who is an old worker of the Congress and who worked for respondent No. 2 at the by-election says that Rudra Pratap Singh worked for respondent No. 1 and distributed cards to Sita Ram and one Jaini and some Koeries of village Champaha for him. He also says that Rudra Pratap Singh took in certain voters to the P. S. 1<sup>st</sup> Camp on the date of poll. Apart from his being a party man he does not appear to be a very reliable witness also, for, while Nagreha itself is a polling station he goes to the length of saying that voters from Nagreha were coming to Pachchim Sarira polling station for voting.

Ram Das (P.W. 44) gives the name of one Des Raj to whom Rudra Pratap Singh gave card, but Resraj (D.W. 64) himself denies this.

Baboo Lal (P.W. 46) is a District Board teacher and he belongs to a village different from one where Rudra Pratap Singh is said to have canvassed support for respondent No. 1. He was on leave during that period but he came to Dhawara where he was posted as a teacher to inquire as to where he had been posted as a polling clerk during the days of election. He could not hear as to what Rudra Pratap Singh was telling the voters without which we fail to see how he could have known that he was canvassing their support.

As we have already pointed out Des Raj denies if any canvassing was done at his door or he was ever given any card by Rudra Pratap Singh.

Rudra Pratap Singh (D.W. 76) has himself denied his participation in any election activity alleged against him.

Bhundu Koeri (D.W. 74) has been produced to deny the assertion by Ram Das (P.W. 38) that cards were distributed by Rudra Pratap Singh at Champaha to certain Koeries.

Lal Bahadur Singh Vakil who was outside the polling station working for Praja Socialist Party denies if the Mukhia of Baoli, which Rudra Pratap Singh is, did anything outside the polling station.

This evidence also, in our opinion, is not sufficient to establish if Rudra Pratap Singh took any part by way of assistance in furtherance of the prospects of respondent No. 1 at the election.

Our findings on the first portions of the issues Nos. 2 and 3, therefore, are: the sarpanches of the Nyaya Panchayats or Panchayati Adalats, members of the Nyaya Panchayats or Panchayati Adalats, pradhans of Gaon Sabhas and chairmen of the Land Managing Committees constituted under the U.P. Panchayat Raj Act and the U.P. Zamindari Abolition & Land Reforms Act and the Rules

made thereunder, members of the Gaon Sabhas and Land Managing Committees, up-pradhans of Gaon Sabhas and vice-chairmen of the Land Managing Committees, and mukhias, as mentioned in lists A to G of the petition, have not been established to have canvassed for respondent No. 1 and given assistance for the furtherance of his prospects at the election by distributing cards to the voters on his behalf, distributing pamphlets issued in support of his candidature, arranging meetings and processions and participating therein and doing all work arising out of the conduct of election, within their jurisdiction and also outside since before a month of the date of election and throughout that month, and even on the date of poll, outside the polling station.

Among these persons, out of those described in lists A and C to G, only Jagat Narain Trivedi, Shyama Shyam, Brij Mohan Tewari, Shyam Lal Gupta, Yuvaraj Singh, Ayaz Ahmad, Lakshmi Narain, Sankatha Singh, Gyan Singh, Chandrika Prasad Singh, Ram Bhajan, Mohan Lal, Rajeshwar Prasad Garg, Baijnath Prasad, Jagannath Prasad, Ganesh Prasad Misra, Sarjoo Prasad, Madho Lal, Nand Kishore, Sooraj Dm, Jhali Singh, Ram Deo and Mohammed Idu had been appointed as polling agents at the polling stations mentioned in the respective lists, but out of them Jagat Narain Trivedi and Chandrika Prasad Singh have not been proved to have acted as such although the others did act as such. None of them has been proved to have left the polling booth as occasion arose or gone outside the polling station and persuaded different voters to vote for respondent No. 1 or to have done any other election work on the date of poll outside the polling stations.

The question, therefore, whether the things alleged to have been done by them were at all done at the instance or with the connivance of respondent No. 1 does not arise.

A question of law, however, arises that even if the first portions of the two issues are decided in the affirmative, was it necessary to establish over and above, that all the assistance in furthering the prospects of respondent No. 1 at the election was given by these persons at the instance or with the connivance of respondent No. 1. The statute itself is very clear on this point and we need not go to any authority beyond the statute.

To give a finding on this hypothetical legal issue we have to read section 123 of the Representation of the People Act, 1951, which so far as it is relevant for our purposes, reads as follows:—

“123. The following shall be deemed to be corrupt practices for the purposes of this Act—

- (1) .....
- (8) the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the connivance of the candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under.....the Government of any State other than the giving of vote by such person.”

Under section 79 the word ‘agent’ used in section 123(8) includes ‘a polling agent’.

The Statute, therefore, clearly provides that if the obtaining or procuring or abetting, etc. is done by a candidate or his agent including the polling agent then it will constitute a corrupt practice without any question of connivance by any one but if this is done by any other person it shall constitute corrupt practice only if it is with the connivance of the candidate or his agent. The burden of proving such connivance obviously lies on the person who challenges the election.

The result of the above discussion in a nut shell is that we decide the first portions of the two issues in the negative except in so far it relates to the appointment as polling agents of some persons mentioned above and their acting as such with the exception of two of them. The other parts of the issues do not fall to be determined on account of the finding on the first parts.

Issue No. 4.

After the findings on issues Nos. 2 and 3 it does not appear to be necessary for us to give a finding on this issue, but as ours is an *ad hoc* tribunal and as it will be dissolved after the decision of this case it will be better to give a finding on this issue as well.

The relevant provision of the Representation of the People Act, 1951, on account of which this issue has been raised, so far as it is relevant reads as follows:—

"123. The following shall be deemed to be corrupt practices for the purposes of this Act—

(1) .....

(8) the obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the connivance of the candidate or his agent any assistance for the furtherance of the prospects of the candidate's election from any person serving under.....the Government of any State other than the giving of vote by such person.

*Explanation.*—For the purposes of this clause.

(a) .....

(b) a person serving under the Government of any State shall include a patwari, choudidar, dafedar, zaildar, shanbagh, karnam, talati, talari, patil, villages munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole time office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply."

The point to be considered in this issue is whether the sarpanches and members of Nyaya Panchayats or Panchayati Adalats, pradhans, up-pradhans and members of Gaon Sabhas, chairmen, vice-chairmen, and members of Land Managing Committees, and mukhias can be said to be persons 'serving under the Government of the State' within the meaning of this clause of section 123 of the Representation of the People Act, 1951.

So far as mukhias are concerned the point stands concluded by an authority of the Supreme Court, 'Hari Shanker v. Shibban Lal' (10 E.L.R. 126), wherein it has been held that Explanation (b) of sub-section (8) of section 123 of the Act enlarges the definition of 'person serving under the Government of any State' contained in the sub-section so as to include a village headman or any other village officer by whatever name he is called, within the said expression; and, as a mukhia is a village headman and, in any event, a village officer, employing a mukhia to canvass is a major corrupt practice under section 123(8) which is sufficient to render an election void. It was also laid down in that ruling that the argument that as a village headman is not paid by the State, he cannot be in the service of the State, is not sound for payment is not the test of service.

The finding on this issue as to mukhias being concluded by authority we have now to proceed to determine whether the other office-bearers referred to in the issue can be said to be 'serving under the Government of Uttar Pradesh' within the meaning of that term under sub-section (8) of section 123 of the Representation of the People Act, 1951.

In this connection it shall have to be seen if they come within the meaning of the words 'serving under the Government of any State' used in the main sub-section itself and, if not, whether they would come within Explanation (b) which enlarges its scope so as to include certain office bearers specifically mentioned therein or other village officers contemplated in that Explanation.

Before proceeding any further and examining the authorities that have been cited during the arguments we propose to examine the scope of duties of the various officers, other than mukhias, mentioned in this issue and the functions they perform under the various provisions of law under which they are appointed.

We shall first take up the cases of *pradhans, up-pradhans, and members of Gaon Sabhas; and chairmen, vice-chairmen and members of the Land Managing Committees.*

For this purpose certain provisions of the U.P. Panchayat Raj Act, 1947 and the Rules made thereunder and also of the U.P. Zamindari Abolition and Land Reforms Act, 1951, and the Rules made thereunder, that were in force on the date of impugned by-election was held have to be taken into consideration.



The Pre-ambble to the U.P. Panchayat Raj Act refers to the expediency of establishing and developing Local Self-Government in rural areas of Uttar Pradesh and making better provisions for village administration and development.

Under section 3 of that Act the State Government has been given power to establish a Gaon Sabha for every village or a group of villages by a special notification in the official gazette.

Under section 4 of that Act every Gaon Sabha so notified shall be a body corporate having a perpetual succession and a common seal and shall have power to acquire by purchase, by gift, or otherwise, to hold, administer and transfer property, both movable and immovable, and to enter into a contract, and shall, by the said name sue or be sued.

Under section 5 all adults permanently residing within the area for which the Gaon Sabha is established, with certain exceptions like persons of unsound mind, suffering from leprosy, being undischarged insolvents, being a servant of the State or local authority, or the Gaon Sabha itself, or being an honorary Magistrates, honorary Munsif or honorary Assistant Collectors, having jurisdiction over any area of Gaon Sabha or part thereof etc. shall be the members of such Gaon Sabha.

We thus see that if a member of a Gaon Sabha is hit by the provisions of section 123 (8) of the Representation of the People Act, 1951, read with its Explanation then almost every voter in a rural area will be debarred from helping a candidate for a legislative body representing that rural area.

Under section 11 (3) of the U.P. Panchayat Raj Act the Gaon Sabha shall elect from among its members a president and a vice-president who shall respectively be called pradhan or up-pradhan.

Under section 14 these pradhans or up-pradhans can be removed by the Gaon Sabha itself at any ordinary meeting by a majority of two-third votes of those present and in such an event and otherwise when any vacancy occurs the Gaon Sabha has to forthwith elect another pradhan or the up-pradhan in the prescribed manner.

Under section 12 every Gaon Sabha is expected to elect from among its members an executive committee known as the Gaon Panchayat. Under that very provision the number of members of Gaon Panchayat has also been fixed.

In chapter IV of the Act have been defined the duties and functions of the Gaon Panchayats and also the manner of their administration.

Under section 37 of the Act a Gaon Sabha may impose certain taxes also and under section 32 there shall be vested in the Gaon Sabha a Gaon Fund which shall be utilised by the Gaon Panchayat to meet the charges in connection with its duties under the Act.

Under section 15 a Gaon Panchayat is expected to make reasonable provision for construction, repairs, maintenance, cleansing and lighting of public streets, medical relief, sanitation, and the taking of curative and preventive measures to remove and stop the spread of an epidemic, upkeep, protection and supervision of any building or other property which may belong to it, or which may be transferred to it for management, registering births, deaths and marriages; removal of encroachments on public streets, public places and property vested in the Gaon Sabha and doing many other things which a corporate body may have to do in connection with its duties. Under section 19 it is expected to maintain and improve schools and hospitals and under section 20 it may have to establish primary schools, hospitals, or dispensaries in connection with other Gaon Panchayats. Under section 25 it is even expected to have a staff of its own.

We thus see that the Gaon Sabha is an autonomous body created by the statute having its executive known as Gaon Panchayat and its president and vice-president known as pradhan and up-pradhan, the latter two being removable by the Gaon Sabha itself. It has certain statutory duties and has even a staff of its own to assist it in the performance of those duties. It can even sue or be sued. It, thus, is a body independent from the Government and a legal entity having legal personality of its own. It has its own funds and even a budget which it is expected to pass under section 13 of the Act. It is in this respect not different from, but is in many respects akin to, the Municipalities created under the U.P. Municipalities Act, 1916, or the District Boards created under the U.P. District Boards Act, 1922, which are also autonomous bodies having perpetual succession and a common seal, respectively under section 6 of the U.P. Municipalities Act and section 4 of the U.P. District Boards Act.

The Government, however, have a supervisory control under section 95 of the U.P. Panchayat Raj Act under which the State Government may—

- (a) cause to be inspected any immovable property owned by a Gaon Sabha, used or occupied by a Gaon Panchayat or a joint committee or any working progress under direction of such Gaon Panchayat or joint committee;
- (b) by an order in writing call for and inspect a book or document in the possession of or under the control of a Gaon Panchayat or joint committee;
- (c) by an order in writing require a Gaon Panchayat or a joint committee to furnish such statements, reports or copies of documents, relating to proceedings or duties of Gaon Panchayat or such committees as it thinks fit;
- (d) record in writing for the consideration of the Gaon Panchayat or joint committee any observation which it thinks proper in regard to the proceedings or duties of such Gaon Panchayats or joint committees;
- (e) institute any inquiry in respect of any matter relating a Gaon Sabha or Gaon Panchayat; and,
- (f) dissolve any Gaon Panchayat or joint committee, or remove or suspend a member thereof if in the opinion of a State Government such Gaon Panchayat, joint committee or member has abused its or his position or has continuously failed to perform the duties imposed by the Act or any rule made thereunder.

Under section 95-A, if at any time it appears to the State Government that a Gaon Sabha or a Gaon Panchayat has made default in performing a duty imposed on it by or under any enactment, including the U.P. Panchayat Raj Act itself, it may by order fix a period for the performance of that duty, and if the duty is not performed within the period so fixed it may direct such authority as may be specified to perform it and may further direct that the expenses, if any, of performing the duty shall be paid from the Gaon Sabha Fund and thereupon the person having the custody of the Fund shall pay the amount from such fund.

Certain rules also have been made in that connection under the rule making power granted to the State under section 110 of the Act. And among those Rules the Government have power under rule 61 after calling for an explanation from the person concerned to remove a president or a vice-president of a Gaon Sabha or a member of a Panchayat under certain conditions.

Such provisions are not unknown to the U.P. Municipalities or the District Boards also that are similarly constituted under the relevant Acts but the question is whether the vesting of control in the Government which is no more than supervisory control, in any way, affects the position of the Gaon Sabhas as an autonomous body, and simply because the Government exercises supervisory control over it do the office bearers, namely, the pradhans, and up-pradhans, who are part and parcel of the machinery constituting the Gaon Sabha can be called in any way persons 'serving under the Government of the State' as distinguished from 'serving under the Gaon Sabha'.

The word 'State' is defined in the General Clauses Act (Central), (Act X of 1897), under section 3(58) as meaning a Part A State, a Part B State, or a Part C State. As the Representation of the People Act 1951 is a Central Act this definition will apply in interpreting the word 'State' used in section 123(8) of that Act. The words 'serving under the Government of any State' will thus mean serving under the Government of any Part A, Part B or Part C State. In Part XIV of our Constitution the expression 'State' under Article 308 means a State specified in Part A or Part B of the First Schedule of the Constitution. We are not concerned here with Part C or Part B States, for ours is a Part A State. The word 'State' therefore as defined under the General Clauses Act (Central) and under Article 308 of our Constitution has the same meaning. Any authoritative interpretation of this word therefore will help us a great deal in understanding as to what a "service under the State" or a "service under the Government of a State" means.

No doubt the words used in Article 311 are, 'civil service of the State' or 'civil post under a State' but in the context in which they have been used they mean that the persons contemplated therein are 'serving under the State'. These words have been the subject of interpretation in several rulings of various High Courts, that were cited before us during arguments on behalf of respondent No. 1.

In 'Mangal Sain v. The State of Punjab' (A.I.R. 1952 Punjab 58) it has been held that civil post under a State does not include the post held by a person in the service of any local authority within the territory of the State. The ruling is not on all fours with the case under consideration, for while here we are considering whether the office bearers of a local authority, namely, the Gaon Sabha, can be termed as persons serving under the State, that ruling specifically related to an executive officer who was appointed under the Punjab Municipal (Executive Officer) Act, 1931, as an executive officer of the Ambala Municipal Committee. But the principle is not different inasmuch as that ruling lays down that a local authority is something different and apart from a State and is not the State itself.

'Dattatraya Motiram More v. State of Bombay' (A.I.R. 1953 Bombay 311) is the next ruling cited and the words "employment under the State" were the subject matter of interpretation therein. It lays down that the person holding office, i.e., 'employed under the State' means a person who stands to the State as a subordinate would to a higher officer, or, in other words, there must be a relationship of an employer and an employee between the person holding office and the State, or at least there must be an element of subordination to the State in the office. This ruling does not interpret the words 'serving under the State' but it interprets the words 'employment under the State' and helps us in the interpretation of the former also.

Lastly, we have been referred to the case of 'Chaturbhuj Sahai v. The Chairman, Board of Directors, Bihar State Cooperative Bank Ltd., Patna' (A.I.R. 1955 Patna, 223) wherein a person at a post under the State Co-operative Bank, Patna was held as not holding a civil post under the State of Bihar within the meaning of Article 311 of the Constitution. It was remarked that although it was true that the State Government did exercise some control over the Co-operative Bank by virtue of the authority given under some of the provisions of the Bihar and Orissa Cooperative Societies Act, 1935, it did not mean that persons who were serving under the statutory body created under that Act hold a civil post under the State of Bihar. There were many enactments, it was so observed, under which the State Government exercises control over statutory bodies or local authorities constituted by statute but that did not mean that persons serving under such bodies hold civil posts under the State.

We thus come to the conclusion that the pradhans and up-pradhans of Gaon Sabhas cannot be said to be 'serving under the Government of the State' within the meaning of that term under section 123(8) of the Representation of the People Act, 1951.

A Gaon Sabha consists of all adults residing within its area. Obviously a person cannot be deemed to be serving under the Government of the State simply because he is a member of the Gaon Sabha. For, in that way every adult residing within that area will be entitled only to vote and to do nothing else in connection with the canvassing or otherwise supporting a candidate for a Legislature.

We now come to the chairmen and vice-chairmen of the Land Managing Committees and also the members thereof.

Under section 113 of the U.P. Zamindari Abolition and Land Reforms Act has been established for each village a Gaon Samaj having perpetual succession, which shall be a body corporate, and subject to any other enactment vested with the capacity of suing and being sued in its corporate name, of acquiring, holding, administering and transferring property, both movable and immovable, and of entering into contract. A Government can also direct a Gaon Samaj to be established for a larger or a smaller area than a village.

Under section 117 of the Act certain lands, forests, trees, wells, fisheries, hats, etc. can be vested by the State Government in the Gaon Samaj.

Under section 118 the Gaon Sabha shall be charged for and on behalf of the Gaon Samaj with the general superintendence, management, and control of all the lands, forests, trees, etc. vested in the Gaon Samaj under section 117.

Under section 120 the Gaon Panchayat shall for and on behalf of the Gaon Sabha perform the functions and possess the powers and discharge the duties assigned conferred or imposed by or under the U.P. Zamindari Abolition and Land Reforms Act or the Rules framed thereunder.

Under section 121 of the Act the Gaon Panchayat shall establish a committee for each circle within its jurisdiction for the purpose of carrying out of the duties relating to settling and managing of lands and such other functions as may be prescribed.

Section 122 relates to the constitution of such a committee while section 123 provides for the prescribing of the term and other matters about the committee including the procedure for its working and the conduct of its business.

Such committee under rule 107 of the U.P. Zamindari Abolition and Land Reforms Rules, is called the Land Managing Committee.

Under rule 109 of the same Rules if the *pradhan* of a Gaon Panchayat is a member of the Land Managing Committee he shall be the chairman of the Committee. If the *pradhan* is not a member but the *up-pradhan* is a member the latter shall be the chairman of the Committee. If, neither the *pradhan* or the *up-pradhan* is a member of the Committee the chairman shall be appointed by the members of the Committee from among themselves. If more than one *pradhan* or *up-pradhan* of different Panchayats are members of the same Land Managing Committee the election shall be confined between the *pradhans* and *up-pradhans* only. The Land Managing Committee may also at a special meeting remove the chairman by a majority of the two-third votes of those present.

Under rule 110 the chairman of the Land Managing Committee shall call its meeting and fix the date, time and place of the same, notice as to which has to be given to all members of the Land Managing Committee at least three days before the date of the meeting. Under the same rule, the chairman shall preside at all the meetings of the Land Managing Committee. In his absence the members shall elect the president for the meeting.

Under rule 110A in the absence of the chairman of the Land Managing Committee a member of the committee authorised by him in writing or in the absence of such authorisation a member authorised by the Committee under a resolution to this effect shall be entitled to sign any documents and to do all other things necessary for the conduct of suits and proceedings.

A perusal of the above provisions of law and rules would show that the Land Managing Committee is only a committee of the Gaon Panchayat which in its turn is the executive of the Gaon Sabha. The Gaon Sabha itself has been vested with certain duties on behalf of the Gaon Samaj. In effect, therefore, the Land Managing Committee is a committee authorised to work on behalf of the Gaon Samaj in connection with the management of land vested in it.

We could not, however, find any provision for the election of a vice-chairman of the Land Managing Committee.

Be that as it may, it cannot be said that the members of the Land Managing Committee or its chairman or vice-chairman, if any, are persons 'serving under the Government of the State'. They perform certain functions of an autonomous body assigned to them under law and rules.

Lastly, we come to *sarpanches* and *panches* of the Nyaya Panchayats or Panchayati Adalats. As to them we shall have to look to the provisions of the Panchayat Raj Act and the Rules framed thereunder for finding out what their duties are and what functions they perform.

Under section 42 of the U.P. Panchayat Raj Act the State Government or the prescribed authority which latter term under section 2 (q) of that Act means an authority to be notified as such by the State Government whether generally or for any particular purpose, shall divide the district into circles, each circle comprising of as many areas, subject to the jurisdiction of Gaon Sabhas, as may be expedient, and establish Panchayati Adalats for each such circle.

Under section 43 of that Act every Gaon Sabha in a circle shall elect five adults of prescribed qualifications permanently residing within its jurisdiction to act as *panches* of the Panchayati Adalat of that circle. The *panches* so elected by all the Gaon Sabhas in a circle shall form a panel.

Under section 44, all the *panches* elected under section 43 have to elect from among themselves a person who is able to record proceedings to act as *sarpanch* of the Panchayati Adalat.

Under section 45, the term of office of every *panch* shall be three years from the date of his election, or if the State Government so declares by notification in the Gazette, such longer term, not exceeding five years, as may be prescribed.

Under section 47 every *Panch* elected under section 43 has to take oath of office in the manner prescribed.

Under section 47 a *panch* may submit the resignation of his office to the prescribed authority.

Under section 48 he may be removed at any time by the prescribed authority in the manner and for the reasons prescribed.

Section 51 describes the territorial jurisdiction of the Panchayati Adalat, Criminal cases, for the trial of which a Panchayati Adalat has jurisdiction have to be instituted before the Sarpanch of the Panchayati Adalat of the circle in which the offence is committed. Similarly a civil suit over which the Adalat may have jurisdiction has to be instituted before the Sarpanch of the Panchayati Adalat of the circle in which the defendant, or any of the defendants where there are more than one, ordinarily resides or carries on business at the time of the institution of the suit, irrespective of the place where the cause of action arose. Certain disputes under the Land Revenue Act also have to be transferred to the Panchayati Adalat by the Tahsildar to be decided in the manner prescribed.

Section 52 of the Act provides for the type of the criminal cases that a Panchayati Adalat has jurisdiction to try. Section 53 gives power to the Panchayati Adalat similar to the powers that are enjoyed by a magistrate under Chapter VIII of the Code of Criminal Procedure. Section 54 describes the sentence that a Panchayati Adalat can pass. Section 55 provides the taking of cognizance of a criminal case triable by a Panchayati Adalat by any court other than the Panchayati Adalat without an order by the Sub Divisional Magistrate within whose jurisdiction the Panchayati Adalat functions under section 85 of the Act.

Under section 64 of the Act the jurisdiction of the Panchayati Adalat is described for the trial of civil suits, while section 66 describes the nature of suits which are excluded from the cognizance of the Panchayati Adalat.

The Panchayati Adalat is therefore like any other court of justice. The difference is only in the manner of appointment inasmuch as the panches are elected by the Gaon Sabha and among themselves they elect their sarpanch and when once they have been so elected they hold office till they resign as required under section 47, or are removed by the prescribed authority, which authority also is appointed by the Government.

Under section 15 of the U.P. Panchayat Raj Act it is one of the duties of a Gaon Panchayat so far as its funds allow to make reasonable provision within its jurisdiction for the administration of civil and criminal justice and election of panches on the panel of Panchayati Adalat according to the provisions of the Act and the Rules made thereunder. Administering justice, therefore, civil and criminal, is done by the Panchayati Adalat on behalf of the Gaon Panchayat which is, in turn, the executive committee of the Gaon Sabha. The statute transfers the function of the administration of justice to the Gaon Panchayat and the panches and sarpanches who carry out that duty must be deemed to be doing so on behalf of the body in which those duties vest. Administration of justice may be the primary duty of the Government of a State as it is its duty to construct, prepare, maintain, clean and light the public streets, to provide medical relief, look after sanitation and take curative and preventive measures to remove and stop the spread of an epidemic, etc., but the Legislature has transferred those duties to a body created by it, namely the Gaon Panchayat, which is only the executive committee of the Gaon Sabha, a completely autonomous body under the statute with a perpetual succession and a common seal. The panches, no doubt, when once inducted into office are not removable by the body that has elected them like the pradhans and up-pradhans of the Gaon Sabhas and the chairmen of the Land Managing Committees. But on that account it cannot be said that they do not carry out the duties allotted under the statute to the Gaon Panchayat. The Government may have complete control of the manner in which those duties are performed but that duty being the duty of an autonomous body transferred to it by the statute it cannot be said that they are serving under the State Government and not under that autonomous body, specially when they are not appointed by the State but are elected by the autonomous body itself although they have to submit their resignation to the authority appointed by the Government and can be removed by such authority.

It is thus clear that even the sarpanches and panches of the Panchayati Adalats constituted under the U.P. Panchayati Raj Act are not persons 'serving under the Government of the State' within the meaning of that term under section 123(8) of the Representation of the People Act, 1951.

Before concluding this discussion we have to look to Explanation (b) to section 123 (8) of the Act also, because in view of the law laid down by the Supreme Court in 'Hari Shanker Prasad v. Shibban Lal' (10 E.L.R. 126), already referred to above, that Explanation enlarges the definition of persons 'serving under the Government of any State' contained in the sub-section itself.

This explanation provides that a person serving under the Government of any State shall include a patwari, chowkidar, dafedar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole time office or not, but shall not include any person (other than any village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.

It is not the case of any party that the panches or sarpanches had been declared by the State Government to be persons to whom the provisions of this clause did not apply. There is no doubt a Notification of a date subsequent to the election, namely, Notification No. E-846/XVII-84-53, dated February 23, 1955, of the Election Department of the Government of Uttar Pradesh published in the U.P. Gazette (Extraordinary) of that date, under which the Governor of Uttar Pradesh has been pleased to declare that the provisions of section 123(8) of the Representation of the People Act, 1951 shall not apply to a sarpanch, sahayak sarpanch, and panch of the Panchayati Adalat, and a pradhan, up-pradhan and members of Gaon Sabha constituted under the U.P. Panchayat Raj Act, 1947. But this notification cannot apply to the case before us as it was issued subsequent to the date relevant for our purposes. It may also be doubtful if these persons could be so excepted by the Government, if they happened to be 'village officers' within the meaning of that term under Explanation (b) of section 123(8) as the statute does not give power to the State Government to exclude such village officers from coming under the definition of the term 'serving under the State Government'. We, however, do not express any opinion as to the validity of this notification because we are not concerned with it. We have only to see if any of these persons comes under the Explanation at all.

The persons whose cases we are considering are not patwaris, chowkidars, dafedars, zaildars, shanbaghs, karnams, talatis, talaris, patils, village munsifs or village headmen, but the question is whether they are 'other village officers' contemplated by the Explanation. The words 'any other village officer' have been used along with some specific office bearers who are village officers and they should be construed only as constituting persons who are of the same kind as the persons specifically named. In other words, the words 'any other village officer' have to be construed in accordance with the rule of *eiusdem generis*.

A patwari is appointed under section 23 of the Land Revenue Act (U.P. Act III of 1901). Under section 234 of that Act the Government has made certain rules known as the Land Records Manual in which they have laid down, in Part I, the recruitment, conditions of service, and duties of the patwaris. The patwaris are appointed by the Collector or the Assistant Collector in-charge of the sub-division. They can be suspended and are removable by the Collector or the Assistant Collector in-charge of a sub-division. They can be punished by them and also suspended. Their duties also have been prescribed under the Rules and the duties that they perform are not with respect to any functions that may have been invested in any autonomous body under any statute. The patwaris were, therefore, performing purely governmental functions and not of any autonomous body and are appointed and removed by a governmental authority.

A chowkidar's post under Act XX of 1856 could be created by the magistrate under section 7 of that Act. They were to be of different grades under section 8 of that Act. They were to be appointed by a magistrate of the Government. They could as well be dismissed by the Magistrate. The word 'magistrate' has been defined under section 61 of that Act.

Under Act XVI of 1873, the North West Province Village and Road Police Act, also the village police men are appointed by the State Government, although certain recommendations were to be called for from zamindars, lambardars, etc. (*vide* sections 3 to 6 of the Act). They can be dismissed also by the Magistrate of the district under section 10 of that Act. They perform certain duties enumerated under section 8 of the Act and these duties do not form part of any of the duties to be performed by any autonomous body.

Similarly, under Act XVIII of 1876, the Oudh Laws Act, also village policemen are appointed and dismissed in the same manner and they too perform similar duties (*vide* Chapter IV of the Act).

The office of the village munsif was created under the U.P. Village Courts Act, 1892, and under that Act a village munsif was appointed by the Collector in accordance with the rules and could also be suspended or removed by the Collector (*vide* section 5 and 6 of the Act). He performed certain duties in connection with the administration of justice under that Act and the Rules made thereunder, but

those duties had not been transferred to any autonomous body like what has been done under the U.P. Panchayat Raj Act, 1947. In 1920 came into force the U.P. Village Panchayat Act (Act No. VI of 1920). Under section 2(a) of that Act the Village Courts Act, 1892, was repealed in respect of such local area to which that Act was applied.

Under that Act 'Village Panchayats' were constituted and they were given certain powers to administer justice. Under section 2 (b) of that Act all suits and proceedings in village courts under the U.P. Village Courts Act, 1892, in the local area, to which the U.P. Village Panchayat Act was applied, stood transferred to the civil court of the lowest grade having jurisdiction to try them. But within a month after the coming into operation of the U.P. Village Panchayat Act, 1920 such cases could be sent for disposal to the Panchayats constituted under the latter Act. The Panchayats constituted under Act VI of 1920, therefore, can legitimately be said to be the successors of the village munsifs and as their appointment and dismissal lay in the hands of the Collector under the Act under which they were constituted and they performed functions which did not vest in any autonomous body, the sarpanches or panches appointed under them could be said to come within the term 'any other village officer' under the rule of *ejusdem generis*.

A village headman is appointed under section 45 of the Code of Criminal Procedure by the District Magistrate and he performs certain duties allotted to him under that provision of law. He also, therefore, performs certain governmental functions which do not vest in any autonomous body and his appointment as well as removal both vest in an officer of the Government.

The Acts of various States under which dafedars, zaildars, karnams, talatis, talaris and patils are appointed could not be shown to us during arguments. But their cases have been considered in 'Shibban Lal Saxena v. Hari Shanker Prasad' (9 E.L.R. 403) at pp. 433-35. Thus, it would appear that they also perform certain governmental functions which are not shown to have vested in any autonomous body, and their appointment and removal vests with the government or an officer of the government.

The common feature of the offices specifically mentioned in Explanation (b) of section 123, Representation of the People Act, 1951, therefore, is that the persons appointed to those offices perform functions which vest in the Government and not in any autonomous local authority and their appointment and removal lies in the Government or an officer of the Government.

The pradhans and up-pradhans of Gaon Sabhas, the chairmen of the Land Managing Committees, and the panches and sarpanches of the Panchayati Adalats cannot answer that description in the matter of the functions they perform and the manner of their appointment and removal. The panches and sarpanches, no doubt, have to submit their resignations to the authority appointed by the Government and they can be removed also by such an authority, but they are inducted into office by the autonomous body itself whose functions they perform. It cannot, therefore, be said that any of these officers is a 'village officer' within the meaning of that term interpreted in accordance with the rule of *ejusdem generis*.

In view of the above discussion it is not necessary for us to go into the dictionary meaning of the word 'serve', or to any authority which may help us to come to the conclusion as to what the word 'servant' means.

Our attention was drawn to 'Goolbai Motabhai Shroff v. Pestonji Kowasji Bhandari' (A.I.R. 1934 Bom. 339) where the test of a person being a servant is the right of control which the master has in the manner in which he (servant) does the work. That test, obviously, cannot be applied to the case before us. It has been applied to cases of vicarious liability under the law of Torts. But if this test is applied to all cases then the judges appointed by the State and liable to be dismissed by the State, who are obviously serving under the Government of the State, will cease to be the 'servant of the State', as the Government has no control over them in the manner in which they do their work. They are appointed to hold certain posts and perform certain duties in accordance with law, but the Government cannot interfere with their day to day duties and ask them to do certain cases in a particular manner. That definition, therefore, may be much too narrow for our purposes although the test given in that ruling applies to cases of tort where one has to determine whether a wrongful act has been done by a servant of a person who is sought to be made liable on his behalf.

In view of the above discussion, we agree with the view taken by the Allahabad Tribunal in 'Deo Chand and others v. Vashisht Narain and others' (6 E.L.R. 138) though for different reasons and not with the view taken by the majority of the Gorakhpur Tribunal in 'Shibban Lal Saxena v. Hari Shanker Prasad' (9 E.L.R. 403).

and hold that sarpanches and members (i.e., panches) of the Nyaya Panchayats or Panchayati Adalats, pradhans, up-pradhans and members of Gaon Sabhas, and chairmen, vice-chairmen (if any), and members of the Land Managing Committees cannot be said to be serving under the Government of the State' (of Uttar Pradesh) under sub-section (8) of section 123 of the Representation of the People Act, 1951. Mukhias, however, are persons serving under the Government of the State under that sub-section.

#### Issue No. 5.

The burden of proving this issue lay on the petitioner. During arguments, however, his learned counsel did not press this issue at all.

It is accordingly decided in the negative.

#### Issue No. 6.

This issue does not call for determination in view of the findings on issues Nos. 2 and 3. But as some evidence has been produced on behalf of respondent No. 1 to establish that instructions had been issued to the agents and workers not to commit any acts against law and rules, it would do well to consider that evidence.

This evidence consists of the statement of respondent No. 1 himself (D.W. 59) who says that a meeting was held in the P.S.P. office in Allahabad of the workers of the Party in connection with this by-election in the last week of November or the first week of December, 1954, election itself taking place on the 19th of December, 1954. Certain lawyer members of the Party were also present and on account of some conflicting authorities they gave the advice that sarpanches, panches, pradhans, sabhapatis, members of the Panchayati Adalats, members of the Gaon Panchayats, members of the Land Managing Committees, up-pradhans of Gaon Sabhas and vice-chairmen of Land Managing Committees and mukhias should not be asked to work at the election, but in case the local workers wanted them to work at all they should appoint them as polling agents only. This advice, according to his statement, was accepted at the meeting and the local workers were instructed thereafter to act in accordance with that advice. Sri K. K. Bhat-tacharya, Dean of the Faculty of Law at the University and Sri S. N. Verma, Advocate, were among the lawyer-members present at that meeting. Respondent No. 1 admits in his cross-examination that Asad Ullah also was present at that meeting. Asad Ullah was the first witness to be examined by respondent No. 1 and he was silent on this point. This came to be introduced for the first time in the statement of Vidya Dhar (D.W. 50), after forty-nine witnesses had already been examined. Sri Saligram Jaiswal admits that no written information was sent to the workers that the office bearers above referred to were not to act otherwise than as polling agents as he did not think it necessary to do so.

We do not consider this evidence as sufficient for holding that any instructions were issued by respondent No. 1 to his agents and workers not to commit any acts against law or rules.

This issue was raised by respondent No. 1 in view of the provisions of section 100 (3) (c) of the Representation of the People Act, 1951.

It was not necessary to decide this issue in view of our findings on issues Nos. 2 and 3, but as this issue has been specifically raised we decide this point against respondent No. 1 and in the negative.

#### Issue No. 7.

Under section 124 of the Representation of the People Act the making of any Return of Election Expenses which is false in any material particular or the making of a declaration verifying any such Return, is a minor corrupt practice. We have to decide if any such minor corrupt practice has been committed by respondent No. 1, and, if so, has it materially affected the result of the by-election?

In paragraph 17 of the petition the Return of Election Expenses filed by respondent No. 1 is challenged as being false and inaccurate. It is asserted therein that the expenses of a number of workers of the Praja Socialist Party who worked and came from outside Allahabad and worked and canvassed for respondent No. 1 or went from the city of Allahabad to different polling stations have not been shown in the Election Return and details about them are given in list I of the petition.

In this connection not much evidence has been produced by the petitioner but respondent No. 1 on oath has himself frankly admitted many things



List I consists of two portions. In the first have been given the names of workers and agents who came from outside Allahabad and whose expenses have not been shown in the Return, while the second portion consists of the names of persons who worked and acted as agents and went from the city of Allahabad to different polling stations and whose expenses also are not shown in the Return.

As to the first portion of list I, respondent No. 1 admits the participation of No. 1, viz., Raj Narain Singh; No. 1(a), Gopal Narain Saxena; No. 2, Narain Dutt Tewari; No. 3, Ram Narain Tripathi; No. 4, Raja Ram Shastri; No. 5, Ganga Prasad Chaube; and No. 7, Dr. Ram Manohar Lohia. As to No. 6, that is, Sri R. S. Varma, he denies if he at all had anything to do in connection with this by-election.

From among the persons in the second portion of list I he admits about Nos. 9, 10, 13, to 15, 17, 18, 23 to 27, 37, 51 to 53, 61, 63, 65 and 66 as having gone from Allahabad to various polling stations.

Raj Narain Singh is admitted to have acted as polling agent at Karari polling station. As to Gopal Narain Saxena it is not admitted if he acted as polling agent, but it is admitted that he accompanied Dr. Ram Manohar Lohia during the election campaign. He says that Gopal Narain Saxena was the Chairman of the State Praja Socialist Party at that time and he, Sri Narain Dutt Tewari, Sri Ram Narain Tripathi were sent by the Party. Those given in a second portion of the list had to go only from Allahabad to various polling stations.

The Return of Election Expenses filed by respondent No. 1 is exhibit 100. The total expenses shown by him therein come to Rs. 2,879-10-9. In schedule K thereof have been described certain expenses known as 'other expenses'; and in that schedule we find among the last two items a sum of Rs. 15 being paid to Hira Lal driver on account of service. Two sums of Rs. 34-10-0 and Rs. 28-2-0 respectively are also shown to have been spent on 18th December, 1954, on account of the use of some vehicle. The learned counsel for respondent No. 1 points out that all this money was spent in connection with transport on the 18th and 20th December, 1954, and as the persons given in the second portion of the list were only taken from Allahabad to the various polling stations, their expenses have been covered by this amount. We have no hesitation in accepting this position.

Under section 77 of the Representation of the People Act, 1951, the maximum scale of election expenses and the number and description of persons who may be employed on payment in connection with the election can be prescribed by rules. Under rule 117 of the Rules known as Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, read with Schedule V to these Rules, the maximum amount of election expenses that could be incurred by respondent No. 1 at the election, it being a double member constituency, was Rs. 12,000. His Return, however, shows that he incurred an expenditure of Rs. 2,879-10-9 and even if the expenses that were incurred in the bringing of outsiders to support his candidature by respondent No. 1 is liberally allowed the total expenditure will in no case go up beyond Rs. 12,000, and the expenses would remain well within that sum.

Respondent No. 1 did not include the expenses of certain persons in his Return as those persons had been sent by the Party. In any case, it was his duty to include the expenses of at least those persons who had come from outside to act as his polling agents and they were Sarvshri Raj Narain Singh, Gopal Narain Saxena, Narain Dutt Tewari, Ram Narain Tripathi, Ganga Prasad Chaube, and Raja Ram Shastri. These persons did not come from beyond Lucknow, Faizabad or Kanpur. Their expenses could not have been very high and the respondent No. 1 could not possibly have any motive in concealing these expenses and not showing them in his Return. It was necessary to conceal the expenses only if the total amount exceeded the ceiling prescribed, or they were incurred for a purpose prohibited under the law. There is no such case here. Respondent No. 1 was under a *bona fide* belief that the expenses of persons that were incurred by those persons themselves need not have been shown in the Return, and it is on this account that he failed to include them in his Return.

Under section 124 (4) of the Representation of the People Act respondent No. 1 would have been guilty of minor corrupt practice only if the Return that he has filed had been false in any material particular. 'False' does not mean inaccurate. It means something more than that. The statement has to be deliberately incorrect in order to be false which means that there must be some corrupt motive behind making it incorrect. As we have already pointed out, the Return in this case is not deliberately incorrect as there was no motive to omit what has been omitted. There is ample authority to support the proposition that the word 'false' necessarily means 'deliberately incorrect' and that there should be an improper motive in omitting legitimate expenses from being shown in the

Return (*vide* 'Mastram v. Harnam Singh Sethi & others', 7 E.L.R. 301, at p. 311; 'Gurnam Singh & another v. Pratap Singh & others', 7 E.L.R. 338, at pp. 380-61; 'Mehta Gordhandas Girdharilal v. Chawada Akbar Dalumyan & others', 7 E.L.R. 374, at p. 393; and 'Saligram Jaiswal v. Sheo Kumar Pande', 9 E.L.R. 67, at p. 72).

Our finding on issue No. 7, therefore, is that although some of the persons described in list I worked and canvassed for respondent No. 1 at the election or went from the city of Allahabad to different polling stations and the expenses of some of them at least have not been shown in the Return but as the concealment is not deliberate, the Return of Election Expenses filed by respondent No. 1 (exhibit 100) cannot be said to be a 'false Return' and as such no minor corrupt practice has been committed.

#### Issue No. 8.

In view of the above findings we hold that respondent No. 1 has not been proved to be guilty of any corrupt practice and that his election to the Assembly cannot be set aside nor can he be disqualified.

No doubt, we have held that Mohammed Idu, a mukhia, who is a person serving under the State, was appointed his polling agent by respondent No. 1 and he acted as such, but in view of the law laid down in 'Satya Deo Bucher v. Padam Deo and others', (A.I.R. 1955 S.C. 5) by the Supreme Court, even if he was a 'person serving under the Government of the State' he did not contravene the provisions of section 123 (8) of the Representation of the People Act, 1951; for, merely acting as a polling agent did not amount to giving any assistance in furtherance of the prospects of a candidate at an election.

#### ORDER

The election petition is dismissed. Under section 99 of the Representation of the People Act, 1951, we declare that no corrupt or illegal practice is proved to have been committed by respondent No. 1.

We also direct that the petitioner, Sri Ganga Prasad Pathak, shall pay to respondent No. 1, Sri Saligram Jaiswal, a sum of Rs. 1,000 as costs in the petition. Respondent No. 2, however, shall bear his own costs.

(Sd.) G. D. SAHGAL, *Chairman.*

(Sd.) KRISHNA CHANDRA SRIVASTAVA, *Member.*

(Sd.) S. K. DONGRE, *Member.*

*The 28th January, 1956.*

[No. 82/1/55/ 1883 ]

By Order,

P. S. SUBRAMANIAN, *Secy*